

# COURT OF ERRORS AND APPEALS

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*Between*  
*WILLIAM S. SQUIER,*  
*Appellant,*  
*and*  
*FRED'K FRELINGHUYSEN,*  
*Receiver, &c.,*  
*Respondent.* } *On Appeal.*

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## *Points for Appellant.*

1. There was error in the appointment of the receiver, the bill stating on information and belief, merely :

2. Because the Vice Chancellor never gained jurisdiction of said cause until long after said appointment was made.

3. The judgment set up by respondents was without jurisdiction, and void as to the H. C. Burnet Mfg. Co. and the appellant.

1st. Because the summons was not served upon a person designated by law to receive such service, therefore the court which rendered the judgment never gained jurisdiction.

2d. It was founded upon the debt of H. C. Burnet, individually, and not that of said company.

4. That that judgment was merely a cover and a fraud, and no rights can be asserted thereby.

5. The respondents failed to exhaust their remedy at law. This must be done before coming into equity.

6. No legal proof that execution was ever issued and returned.

7. The judgments and executions of Squier were *bona fide* and not recovered—not used as a fraudulent cover to protect any or all of the property of the company, or to hinder, delay or defraud any other creditors of said company.

8. The relief exceeds that sought in the prayer of the bill, and is therefore unauthorized.

9. The decree cannot grant secondary equity.

10. No fraud or collusion has been shown to have existed between Squier and the company.

11. The testimony of Beach, Burnet, Squier and Condit, as to what was said to them by Parker, and the other officers of the company, and also what was said by Burnet after he ceased to be an officer of the company, was hearsay only, and therefore illegal, incompetent and inadmissible.

12. Where equities are equal, the legal title must prevail and courts will not interfere on a bill either for relief or discovery.

We, therefore, ask that the decree of the Court of Chancery be reversed and the bill dismissed, with costs.

JOHN LILLY,  
*Solicitor and of Counsel with Appellant.*

CORTLANDT PARKER,  
*Of Counsel.*



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### *Brief.*

This appeal brings up all the proceedings had in the above cause and including the decree final advised by Vice-Chancellor Van Fleet, dated March 14th, 1881.

The respondents, The Mechanics' National Bank at Newark, New Jersey, now represented by its receiver, filed their bill in the Court of Chancery, December 19th, 1878, upon which was granted a rule to show cause in the shape of a preliminary injunction. The bill alleges on *belief only* that Squier entered into collusion with the H. C. Burnet Manufacturing Company and did certain acts to defraud the respondents. The judgments and executions obtained by Squier against the company are not attacked as fraudulent in the bill. They must be considered and taken as regular.

The allegation in their bill being "that he used the same for a fraudulent purpose, to defeat, hinder and delay them as well as other creditors of said company."

1st. In the first place, there was error in granting the rule to show cause, as not sufficient proof in the bill, supported, as it was, by the affidavits of Oscar L. Baldwin, Wm. G. Beach and Albert P. Condit, who was one of the counsel below, to have of itself given either the rule to show cause or the order of appointment of receiver afterwards.

Allegations in a bill of discovery made on information and belief are insufficient.

*Phillips v. Schooley*, 12 C. E. Gr. 140.

Much less was there when confronted by the answer of Squier under oath, and his affidavit as well as those of James H. Parker, the secretary of the company, and Theodore V. Smith.

The direct responsive answer of a defendant as to a fact within his own knowledge must prevail unless overcome by more evidence than the oath of one witness.

*Bent v. Smith*, 5 C. E. Gr. 199.

No affidavits can be used at final hearing.

*Attorney-General v. Steward*, 6 C. E. Gr. 340.

Great hardship in this particular case. I shall ask for a reversal of the decree made in this cause.

2d. Because all the proceedings were irregular, and therefore void *ab initio* up to the time the order of reference was granted, May 20th, 1879 (p. 51.)

The cause was never referred to the Vice Chancellor, to advise what decree should be made; he never gained jurisdiction by consent; on the contrary, objections were raised continually, as is shown by the petition (p. 52, &c.)

The order appointing the receiver has not yet received the sanction of the Chancellor by his signature. Has Squier the right to attack the judgment of the respond-

ents? He was not a party to the judgment where recovered, and under the decision of *Burnet Manufacturing Company v. Mechanics' National Bank*, 5 Stewart 236, he is certainly entitled to the same proof as though he traversed it in his own answer.

A fraudulent judgment may be attacked collaterally, for it is void as against creditors.

Bump on *Fraudulent Conveyances*, p. 499, and cases cited.

Such application can only be made by judgment creditor.

*Wintingham v. Same*, 20 Johns. 296.

The court in a proper case may look behind a judgment at law to do justice to the parties.

1 Chancery Cases 202.

*Conover v. Jeffery*, 11 C. E. Gr. 36.

There can be no doubt of power of Court of Chancery to look into the judgments of other courts and to set them aside on the ground of fraud.

*Davis v. Headley*, 7 C. E. Gr. 115.

The Vice-Chancellor has erred in the application of the law he cites in his opinion.

If Squier had been party to the judgment below, then he would be estopped.

Justice Depue said, in December, 1878, or January, 1879, when the case was laid before him by the company, and it was stated that the cause was now in equity, refused to entertain the motion to open the judgment and said as the cause was now in equity the defendants would get all the relief there that could be given in a court of law.

Mr. Condit, the counsel, also stated the same to Justice Depue as a reason for so ruling thereon.

Now is this company to play battledore and shuttlecock from law to equity, and be then told by equity you must go back to law—and then be told by law you come here too late?

How could Squier go into a court of law and ask to open that judgment, he being no party thereto?

It was admitted on the argument below, that if Squier could attack this judgment of respondents their cause was at an end.

All the cases cited on the argument below, and those cited by the Vice-Chancellor, in his opinion, where party defendant in suit at law comes into equity, and endeavors to interpose same defence there, but no case was cited that if a third party, not a party to the suit at law, could not attack that judgment in a suit in equity.

Is he to be estopped by the fraud and collusion of company and bank, and be told he is to go to law? Is this equitable and just?

3d (1). The judgment set up by the respondents, was without jurisdiction and void as to the company, the summons not having been served upon a person designated by law to receive such service.

Section 87 of corporation act (Revision, p. 193,) states very particularly upon whom and how such service shall be made.

Burnet was served for company and himself (pages 150 and 151), therefore irregular and void, as he ceased to be president in the latter part of July or early in August 1878 (pages 144 and 160.)

Section 48 "Corporations," Revision, p. 185. When any person, a director of any body corporate, shall cease to be a *bona fide* holder of some of the stock thereof, he shall cease thereupon to be a director thereof.

The president must be one of the directors, (§ 17, "Corporations," Revision, p. 180.)

Burnet swears that he ceased to be the owner of any of its shares (p. 144.)

There was another officer upon whom the summons and other papers could have been served, James H. Parker, the secretary, (pages 11 and 187.)

The summons must be served on president, clerk or cashier.

*Flax Co. v. Ballentine*, 1 Harr. 454.

The respondents had notice that they were obtaining their judgment illegally. Burnet swears so (p. 151.)

The certified copies as well as the originals which were served on Burnet, were competent evidence.

3d (2). The judgment of the respondents was not founded upon a debt due them by the company.

Burnet swears it was his debt, and not of the company (p. 147.)

The notes were made through fear and duress (p. 147.)

The company paid value for the property purchased of Trimble in stock.

Burnet had no power or authority either from directors or stockholders to give these notes (pages 148 and 150.)

Baldwin never asked for Burnet's authority to sign officially (p. 152.)

S. B. Sanderson had put \$5000 into the company in January, 1878 (p. 165.)

These notes were a fraud on the stockholders and on the other creditors.

*Green's Brice's Ultra Vires* 158.

*Angell and Ames on Corp.*, § 233, and cases cited.

*Society Practical Knowledge v. Abbott*, 2 Beavan 559.

4th. Such a judgment was merely a cover and a fraud, and no rights can be asserted thereby.

Courts of equity will not lend their aid to enforce an unjust or unconscionable bargain.

*Suffern v. Butler*, 4 C. E. Gr. 202.

*Society v. Butler*, 1 Beas. 498.

*Brewer v. Wilson*, 2 C. E. Gr. 180.

A court of equity has, and will exert jurisdiction to defeat any claim upon such a judgment.

Where there is fraud by all, no aid will be given by courts.

Price *v.* Pollock, 8 Vr. 44.

Courts will not lend aid to fraudulent transactions.

Church *v.* Muir, 4 Vr. 318.

Courts of equity will never lend their active aid to a party who, by a superior knowledge and artful silence, has gained an unfair advantage over another.

Erie *v.* D., L. and W. R. R. Co., 6 C. E. Gr. 283.

It is a principle well established that he who asks *equity* must do *equity*.

Reeves *v.* Cooper, 1 Beas. 223.

N. J. Franklinite Co. *v.* Ames, 1 Beas. 512.

Yard *v.* Pacific Insurance Co., 2 Stock. 480.

5th. It does not appear that the respondents have exhausted their remedy at law.

This must be done before they can come into equity.

Green *v.* Tantum, † C. E. Gr. 105.

Same case on appeal, 6 C. E. Gr. 364.

Wooden *v.* Wooden, 2 Gr. Ch. 429.

Randolph *v.* Daly, 1 Gr. Ch. 313.

Hoagland *v.* Township, 2 C. E. Gr. 106.

Execution alone, not judgment, that a lien is acquired on personal property.

Dunham *v.* Cox, 2 Stock. 437.

6th. No legal proof that any execution was ever issued. None in the printed testimony, and none before the court before the argument was finished, and none sent by Vice-Chancellor in respondent's exhibits.

The Vice-Chancellor erred when he said he would consider same when the argument was being made.

When part of the *res gestæ* is omitted before the case is closed, it is error afterward to open the cause and supply the proof.

State California *v.* William Parks, 44 Cal. 105.

2 Green's Criminal Law Reports 398.

If I have stated the law to be correct, then the decree must be reversed, for the reason stated.

7th. The judgments and executions of Squier were *bona fide*, and not recovered nor used as a fraudulent cover to protect any or all of the property of the company.

The bill admits their legality and *bona fides*; the proof established beyond doubt that their true consideration was for goods sold and delivered, money advanced, and for interest due before the suits were begun.

The answer, page 17, gives the items; that the goods were sold and purchased on thirty days' credit, and interest to be added, is fully proved by Burnet, page 155, and Squier, page 111.

Squier had the perfect right to bring the suits in the way he did. They were separate transactions.

8th. The relief given exceeds that sought in the prayer of the bill and therefore is unauthorized.

The decree must conform to prayer of bill, and cannot be granted on other grounds.

Adams v. Ryerson, 2 Hal. Ch. 618.

Ely v. Perrine, 1 Gr. Ch. 396.

Stover v. Wood, 11 C. E. Gr. 56.

9th. The bill must contain respondents, case—cannot get secondary equity.

McLean v. Givin, 7 Ired. Eq. 55.

Whelan v. Whelan, 3 Cow. 557, 560.

Gouverneur v. Elmendorf, 5 Johns. Ch. 823.

James v. McKernan, 6 Johns. Ch. 559.

10th. Was there any fraud on the part of Squier in these whole proceedings; if so, how must it be shown?

Fraud is defined to be "any act which is resorted to or employed by one person to obtain an illegal advantage over another."

Fraud in the intention of Squier must be proved, not inferred.

*Tantum v. Green*, 6 C. E. Gr. 364.

*Goodwin v. Hamill*, 11 C. E. Gr. 24.

*Jones v. Naughtright*, 2 Stock. 298.

*Cort v. Skillin*, 2 Stew. 70.

Irregularities and carelessness are not sufficient to arouse suspicion—do not supply place of fraud.

*Jewett v. Bowman*, 2 Stew. 174.

Fraud will not be inferred from circumstances which merely indicate unusual generosity.

*First National Bank of Freehold v. Irons*, 1 Stew. 43.

Mere allegations of fraud not sufficient.

*Smith and Martin v. Kuhl and Hewit*, 10 C. E. Gr. 38.

Fraud must be distinctly proved.

*Kerr on Fraud and Mis.* 382, &c.

Fraud is never to be presumed. It must be clearly proved as set out in the bill, if no relief granted.

*Mulock v. Mulock*, 5 Stew. 350, and cases cited.

*Clark et al v. White*, 12 Pet. 178.

*Beatty v. Fishel*, 100 Mass. 449.

*In Matter of Vanderveer's Will*, 5 C. E. Gr. 463.

Courts of equity will not find fraud upon any less proof than what a jury will require.

*Story's Eq. Jur.*, § 190 (a).

Fraud is not presumed from vague and slight conjectures or supplied by notions of fancied equity.

*Bigelow on Fraud* 202.

If not strictly and clearly proved as alleged, relief can not be had, although party against whom it is sought may not have been perfectly clear in his dealings.

*Kerr on Fraud and Mis.* 382 and note.

If a case of actual fraud is alleged in the bill, relief cannot be had thereon, by proving only a case of constructive fraud.

*Kerr on Fraud and Mis.* 383 and note.

If the relief sought by the bill is based on fraud, failure to prove same is fatal thereto.

Kerr on Fraud and Mis. 500.

Squier a dealer at bank and nothing said about the company's notes (p. 97.)

Squier did what showed that sale was *bona fide*, wrote letter (p. 99.)

Company he believed were solvent (pages 102 and 113), even if it were otherwise then the rule.

Knowledge by the purchaser that the seller is embarrassed and that if no one would buy his goods his creditors would get their debts out of them, will not affect the validity of the sale, provided the object in purchasing was not to delay and hinder creditors.

Atwood v. Impson, 5 C. E. Gr. 150.

No proof that \$5000 in goods were there. The goods at constable's sale brought more than they were worth.

Even if he knew of the company's notes about the time he made the sale, he was told that they were not given for value.

No inadequacy of price; proved on the contrary they brought more in proportion than at the receiver's sale.

The sale, nor the way in which it was made, is not attacked by the bill, and the proof in regard thereto should have been excluded.

Was the sale a legal and regular one? The officer who made it says it was. Patrick C. Smith, pp. 168 and 169.

A flag is not necessary to have been put out—no statute requiring such to be done.

It took place before the respondents began their suit.

As to the respondents having no notice of the sale does not constitute fraud. To the tearing down of the notices by Parker as related by Beach, p. 61, as well as all other evidence by same witness as to what Parker told him, was hearsay, incompetent, could neither bind the company nor Squier.

11th. The testimony of Beach, Burnet, Squier and Condit as to what was said to them by Parker and other officers of the company, and also what was said by Burnet after he ceased to be an officer of the company, was hearsay only, and, therefore, illegal, incompetent and inadmissible.

A corporation is an entity acting by its seal. Nothing that a stockholder or officer can say will bind them, unless within the line of their duty.

Angell & Ames on Corp., § 659, and cases cited.  
*Mahone v. Manchester, &c., R. R. Co.*, 111 Mass. 72.

Mere admissions of a director or stockholder of a corporation are not, it seems, evidence against such.

Angell & Ames on Corp., § 309, and cases cited.

Declarations or agreements of one or more of them, (the managers) made elsewhere, would not bind the company, and are inadmissible as evidence in an action by contractor for additional compensation founded on the alleged mistake.

*Stoystown, &c., Co. v. Craver*, 45 Pa. State 386.  
*Salado College v. Davis*, 47 Tex. 131.

The refusal of the court below to instruct the jury "that an individual officer of a corporation cannot by his acts bind the corporation, unless such acts are authorized or approved by the corporation," held to have been erroneous.

*Brooklyn Gravel Road Co. v. Slaughter*, 33 Ind. 185.

State what occurred fully and in detail at the time the plaintiff called for the package. A conversation had between himself and another agent. Held, this should be excluded.

*Am. Merchants' Union Exp. Co. v. Gilbert*, 57 Ill. 468.

Declarations of the director of a corporation respecting its past transactions are inadmissible as evidence.

Franklin Bank *v.* Cooper, 36 Me. 179.

Lime Rock Bank *v.* Hewitt, 52 Me. 531.

Chelmsford Co. *v.* Demarest, 7 Gray (Mass.) 1.

Angell & Ames on Corp., § 659, n. 6, and 669.

Statements of the agent of R. R. Co. made after the inspection, as to the reason for rejecting certain of the ties, are hearsay testimony and should not be admitted in evidence.

Donnel *v.* Clark, 12 Kan. 154.

Declaration of agent made after event occurred, if within a day or two, is no part of *res gestæ*, and cannot be received against principal.

Patterson *v.* So. Car. R. R. Co., 4 S. C. 153.

East Tenn. R. R. Co. *v.* Duggan, 51 Ga. 212.

Huntingdon, &c., R. R. Co. *v.* Decker, 82 Pa. State 119.

In a cause before Judge Lowell in U. S. Cir. Ct. for Mass., not reported, but I am informed he held that the case decided by the U. S. Sup. Ct. from the Western Circuit was the true rule was:

“That the admissions of an officer or agent of a corporation in a matter outside of his authority, or in a matter contrary to law, could not be used to the prejudice of a corporation, or of innocent parties to be affected by it.”

In the case before Judge Lowell the effort was made to prove by the treasurer of a corporation that the stockholders, at large, had informally assented to a certain sale which it was sought to be set aside. It was held by Judge Lowell that the treasurer was not competent to prove such assent. It was admitted, however, that he had said so, and that he possibly believed what he said, but as the assent of the stockholders was necessary, it was not permitted to be proved in this way.

It seems to me that the above reasoning is clear and conclusive, and very applicable to the case now being argued. If the rule is that the party himself cannot state what his belief was, he being an officer of a corpo-

ration, as to its acts, and he be declared an incompetent witness, how much less incompetent is the hearsay testimony of a person who heard such officer state such matters and things, which is sought to bind the corporation and show its collusion with some one else.

Now no assent of the stockholders was attempted to be proved in any other way than by what the officers said, and the United States Supreme Court, holding the doctrine that such assent was necessary, it seems to me to be grave error in admitting this evidence.

The doctrine of waiver will not apply, as objections were continually made, and yet it is by this evidence they seek to connect Squier with the company in this collusion.

These statements, therefore, cannot bind the company and much less Squier, who was no party thereto.

I wish the court right here to look at the fact that the Vice-Chancellor admitted all this hearsay testimony where it benefited the respondents and injured Squier, and rejected all when *vice versa*.

All this testimony of Beach as to what Parker told him was hearsay—likewise that of Burnet what Parker told him—also Burnet's testimony on order for discovery, Parker died in April, 1879, before any chance for taking his deposition, stricken down with pneumonia.

Testimony which A. P. Condit swears to was not competent, because taken in a proceeding when neither Squier nor the company were parties. On an order of discovery on Halsted C. Burnet alone, and was hearsay evidence—no proof that Coe ever showed statement.

Beach an interested witness. He expected Frederick H. Smith to be appointed receiver, and he was to run the works (p. 71.) He is also a prejudiced witness, bearing malice (p. 87.) He don't know what happened at the sale (p. 69). He knew value of goods at time of the constable's sale, as he was there (p. 71.)

Strip this testimony of what Beach says Parker told him, and there is no case on part of respondents—no col-

lusion at all. Parker afterward working for Squier does not legalize his declarations concerning the company or Squier. Squier never saw the notices of sale, even if Parker tore them down (p. 91.)

Squier put from \$3000 to \$4000 in the business (p. 95.)

After sale, if no objections were made, Squier had right to use name of company as a trade-mark.

Trade-mark cannot be sold under execution.

*Pool v. Boylan*, decided by *Runyon, C. Zeilin & Co. v. A. T. Simmons Liver Medicine Co.*, United States Circuit Court, Tennessee.

No fraud in the way Squier conducted business, in company's name.

The books of a corporation are not evidence against third persons.

*New England Co. v. Van Dyke*, 1 Stock. 498.

*North River Meadow Co. v. Shrewsbury Church*,  
2 Zab. 425.

In fact, they were never offered in evidence against Squier.

No statute now in existence, which precludes any corporation from making preferences if they so choose (§ 70, Revision 189.)

The old section 2, Insolvent Corporations, p. 405 of 1868, says they can not, but this has since been repealed.

The cases of *Wells v. Railway White Rubber Co.*, 4 C. E. Gr. 402; *Receiver People's Bank v. Paterson Savings Bank*, 2 Stock. 13, will not apply.

Loaning money just previous to beginning suits. How natural for creditor to do so under wrong impression of how his debtor is. Squier had perfect right to buy any judgment and hold the same, does not constitute fraud. Receiver publicly sold property for \$1500, having tried hard to sell at private sale. Pages 184 and 185. Much more goods there than at constable's sale. Page 131.

Loaning money afterwards on bills receivable—legal transaction.

Inadequacy of price not sufficient to set aside sale.

National Bank Metropolis *v.* Sprague, 5 C. E. Gr. 159.

Morris *v.* Woodward, 10 C. E. Gr. 32.

Baldwin wanted to ruin Squier in his business.

Nothing but conspiracy against Squier.

Burden of proof on respondents. If any doubts, Squier to have benefit.

Where equities are equal, legal title must prevail and courts will not interfere for relief or discovery.

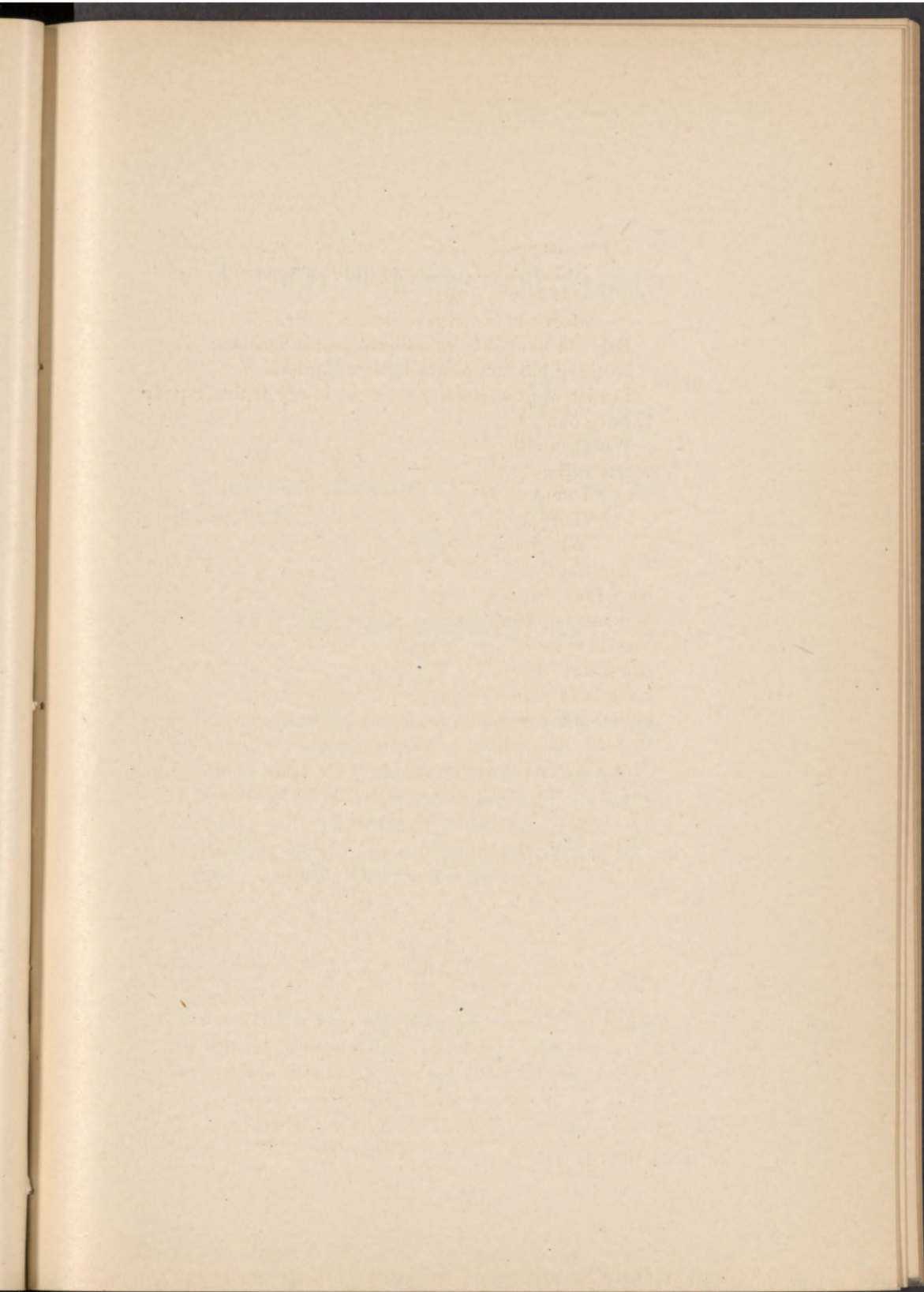
Duncan *v.* Smith, 1 C. E. Gr. 240.

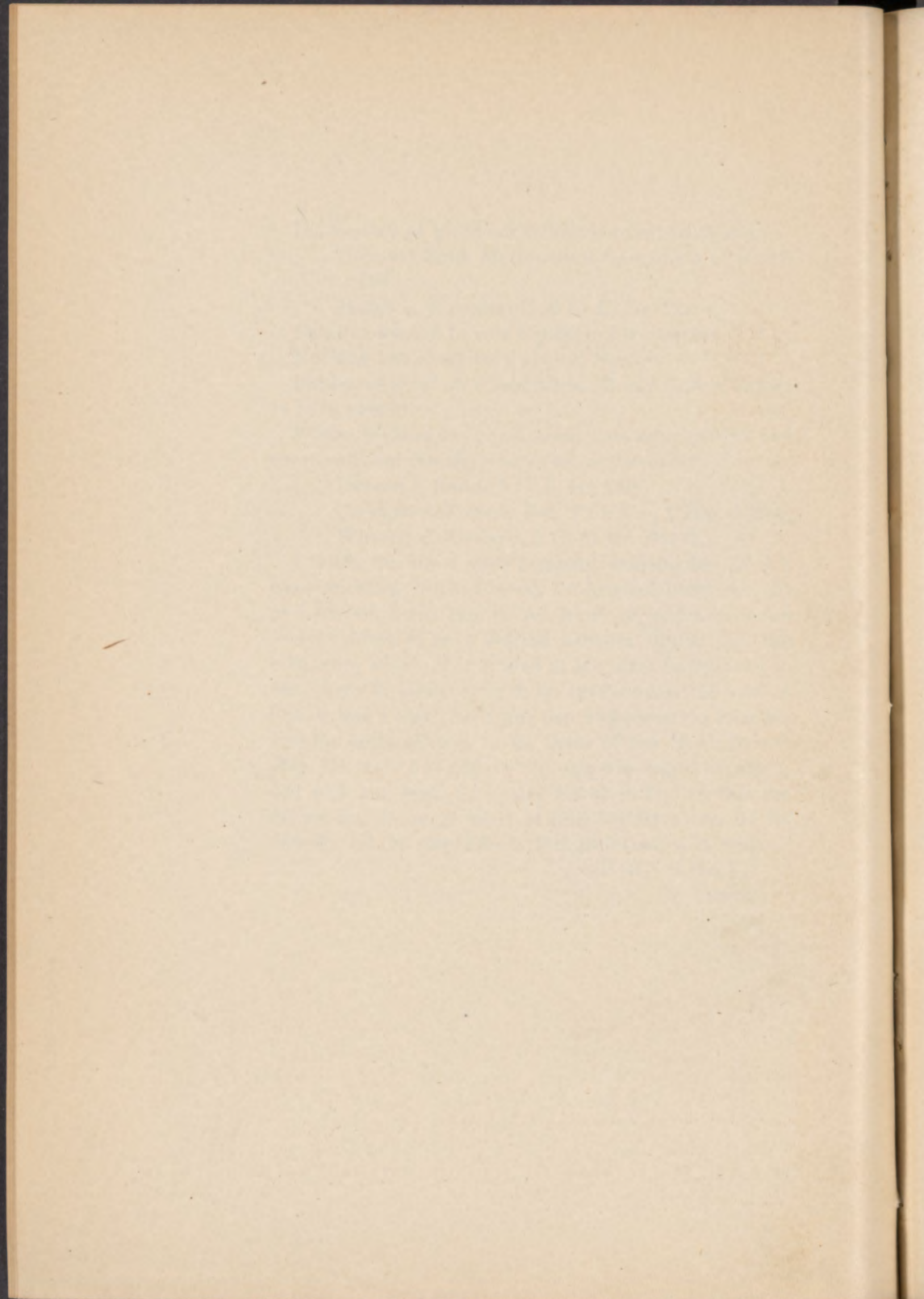
Corrigan *v.* Trenton Del. Falls Co., 1 Hal. 232-4.

Wheeler *v.* Kirtland, 9 C. E. Gr. 552-5.

I think, therefore, upon a careful examination of this case, rejecting all the hearsay evidence of Beach, Condit and Burnet, there can be no fraud or collusion found therein shown to have existed between Squier and the company, which, if it existed at all, must be believed to have been in existence in July, 1878, and as the sale of Squier was a legal, *bona fide* one, and occurring long before the notes alleged to be those of the H. C. Burnet Mfg. Co. were due and before suit was begun on them, and with the legal title fully vested in Squier, that the decree should, on grounds of pure equity alone, be reversed, and the respondents' bill dismissed, with costs.

JOHN LILLY,  
*Of Counsel.*





## N J. Court of Errors and Appeals.

WILLIAM S. SQUIER,	} <i>On Appeal from Decree advised by Vice Chancellor Van Fleet.</i>	10
<i>Appellant,</i>		
<i>and</i>		
FREDERICK FRELINGHUYSEN,		
RECEIVER, &c.,	<i>Respondent.</i>	

### POINTS FOR RESPONDENT. 20

#### I.

The judgment and execution against the Burnet Manufacturing Company, in favor of Squier, and the sale to him thereunder of all the goods of the company, were, in fact, contrived and arranged between Squier and the company, with the intention (either wholly or in part,) of hindering, delaying or defrauding the creditors of the company, and were used for that purpose.

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#### II.

If any fraudulent purpose to hinder creditors existed, the fact that the debt upon which the judgment was recovered was due to Squier from the company, and that the judgment was intended to secure it, will not protect the sale from being set aside as fraudulent against creditors. Under the statute relating to frauds against 40

creditors, *good faith* to other creditors, as well as a good consideration, is necessary to the validity of every judgment, execution and conveyance.

*Revision*, p. 446, § 12.

10 This was the construction put upon the statute in *Twynes case*, where a conveyance to one creditor in satisfaction of a debt was set aside as fraudulent against other creditors, and is the rule which has always been enforced in this State. In addition to the cases cited by Vice Chancellor, p. 214, (especially *Bank vs. Durant*, 7 C. E. Gr., 35 and 42, and *S. C. on Appeal*, 9 C. E. Gr., 556, where the rule was applied to a case like the present,) see latest case in this Court.

*Heintze vs. Bentley*, 7 Stew., 562 and 566.

### III.

20 The assignments of the accounts and bills receivable, due to the company, were also made in furtherance of this scheme, and are invalid as against the complainant.

JOHN R. EMERY,  
*Counsel for Respondent.*

## COURT OF ERRORS AND APPEALS

*Between*  
WILLIAM S. SQUIER,  
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*and*  
FRED'K FRELINGHUYSEN,  
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} *On Appeal.*

### *Brief on Point I.*

The manufacturing company were organized in January, 1877, from that time until the fall of 1878, were engaged in the manufacture of inks, mucilage and sealing wax, at Newark. The defendant, Squier, sold to the company most, or a great deal of their material (*Burnett*, p. 166, l. 30.) He was upon very friendly terms with Burnett, the president, and Parker, the secretary of the company. The company (through Burnett and Parker) had been, for over a year, in the habit of loaning their notes to Squier for his accommodation (*Squier*, pp. 106 and 107,) ~~and~~ they furnished him room at their factory for storing his goods (*Beach*, p. 83, l. 10, &c.) and during the summer of 1878, Squier was at the factory every day, to receive his mail, and occupied a separate room

without rent, (*Squier*, pp. 100 and 101.) He often looked over the books of the company with Parker, the secretary, during the summer, (*Beach*, p. 74, l. 10, &c.) On August 8th, 1878, a judgment was recovered against the company by one Gooch, which, on the 24th of August, was assigned to Squier, he paying, as he says, \$146.95, at the request of Parker (p. 101), as a temporary accommodation to the company.

Three days afterwards, on August 27th, and without the payment to him of any ~~person~~ *portion* of his claim against the company, then outstanding (about \$1000), he advances in cash \$167.71 (p. 17.)

Up to this time, Squier had not only shown no anxiety about the payment of his claim, but his whole course of dealing with the company showed that he considered himself entirely safe in making his sales and advances. On June 3d, 1878, when the two bills of April 10th and April 15th, together amounting to \$256.81 (p. 17), were still unpaid, he leaves this account open and unpaid, and gets, as he says, an accommodation note of *this identical amount*, which he agrees to take up himself, (*Squier*, p. 111.) Through June and July he sells about \$500 to the company, (p. 17,) still without any payments on the previous accounts, and then makes cash advances to the company in July and August for about \$200 for their temporary accommodation, (*Squier*, p. 136.) No demand or request for the payment of any of the bills seems ever to have been made except for the repayment of the loan of \$167.71 (p. 141, l. 35,) and this he swears that he asked for on the following day, because it was only borrowed for a day, although he had previously sworn, (p. 109, l. 20, &c.,) that it was a loan *for a few days*.

Squier then believed that the company was solvent, (p. 114, l. 13); they had in store a large stock of goods besides accounts coming in, and there can be no doubt that if the payment or security of his claim had been his only motive, the course subsequently taken would not have been pursued.

On August 29th, (Ans., p. 16, l. 23,) Squier commenced six suits in the District Court upon his claim of about \$1150, which was divided into six portions, each less than \$200. For the bills of April 10th and 15th, amounting to \$256.81, it is probable that a note had been given to Squier which was then outstanding in the hands of third parties and not due till September 10th, (*Squier*, p. 111.) This was according to the course of business of the parties, (*Burnett*, p. 155.) A bill of goods for the July purchases amounting to over \$300, was divided up into two bills, (*Beach*, p. 66, l. 20 ; pp. 79 and 80,) by Parker's direction about the time of commencing suit. For the claims of cash in the different bills there seem to have been no vouchers, and the interest on all the accounts in the different bills is put in the last suit in the item of \$30, (Ans., p. 17, and *Squier*, p. 110.) Squier himself ~~unites~~ unites the states of demand, (p. 112, l. 26,) and no defence or appearance is made, judgment by default is entered for all the claims, and execution is at once issued on all the judgments and levy made, (see Schedule, pp. 197 and 198.)

writes

These facts relating to the claims and suits, while not showing the debts to be unfounded, do show that the recovery of judgment on them in this shape, must have been matter of conference and arrangement between Parker and Squier.

Parker on his part, understands *before the sale*, that Squier was to buy in all the property of the company at the sale, and so informs Beach, the manager, (*Beach*, pp. 60, l. 20 ; 86, l. 23, &c.) Burnett, the president, understands from Parker that the sale to Squier was allowed on the understanding that if Squier came in, some arrangement could be made for carrying on the company, (*Burnett*, pp. 161, 165 and 166,) and Squier himself refrained from enforcing the Gooch judgment because he expected his own claims to take *all the property* in the factory, (*Squier*, p. 102.)

Before the sale, Parker in connection with Beach, spent two days in making a careful inventory in detail of all the company's property in the factory, (*Beach* pp. 58, l. 20; 62, l. 20; 67, l. 10.)

This inventory is in the cash book, *Exhibit No. 5*, and was found among the books of the company, (*Ib.*, and p. 77, l. 10, &c.) This inventory has a valuation of the property then in the factory, and shows that it was then estimated to be worth over \$5000. Parker in his affidavit to Squier's answer (p. 35,) admits that it was inventoried much above the amount for which it was sold.

This inventory was evidently prepared for the purpose of future and secret settlement between Squier and the company after the sale, and is strong corroborative proof of Parker's statement as to the object and effect of the arrangement for transferring all the property to Squier, (p. 12, l. 30, &c.)

To secure all possible secrecy at the sale, the notices of sale were taken down as soon as posted, and exhibited by Parker to Beach, (*Beach*, p. 61, l. 20, &c.; p. 76, l. 10, &c.,) who is also requested not to put in his claim for wages to the constable, for fear that the bank may learn of the sale, (*Beach*, p. 62, l. 1, &c.)

The notes of the bank were coming due about the middle of September, as Squier also understood at the time of commencing his suits (*Squier*, p. 98.) On the day of the sale Parker, at noon dismisses the men for a holiday (p. 63, l. 35,) and sends Beach for Stevenson, with whom Squier boarded, and whom *Squier* had arranged to have at the sale (*Beach*, p. 63; *Squier*, p. 115.) At the sale the whole property, located in every room in the building, with all the tools and fixtures, is put up for sale together, and struck off to Squier for the lump sum of \$1150 [(*Squier*, pp. 115-117.) Stevenson and a creditor named Smith (who was paid soon after Squier got possession,) made a bid or two; but the failure of either of these persons to appear and explain their suspicious ap-

pearance and bids, confirms the supposition that their bids were also pre-arranged. Squier, without having said anything to any of the men, expected them to attend work, as usual, the next morning (p. 121, l. 1', &c.,) and, in fact, the business did proceed as usual, in all respects (*Squier*, p. 122.) The secretary still occupied the same position, and goods were ordered in the name of the company (*Beach*, pp. 71, 70,) a change being made only in the shipping receipts by writing Squier's name across the face.

Squier now denies (p. 89, l. 30, &c.,) that he ever had, *before* the sale, any conversation with Parker relating to the sale; but his present story is not credible. The fraudulent transfer which was, in fact, carried out, was possible only through arrangement between Parker and Squier, and many circumstances, such as Parker's sending for Stevenson, whom Squier had asked to come, Squier's expectation that work would go on as usual, Parker's declarations that Squier was going to buy, show clearly a communication between the parties.

The manner in which the business was carried on and the accounts were kept after the sale, shows also that the company was considered by Squier as the real owner of the goods.

On September 18th, the company assign the accounts due them on goods sold from September 2d to that date, (*Exhibit No. 9* for complainant.)

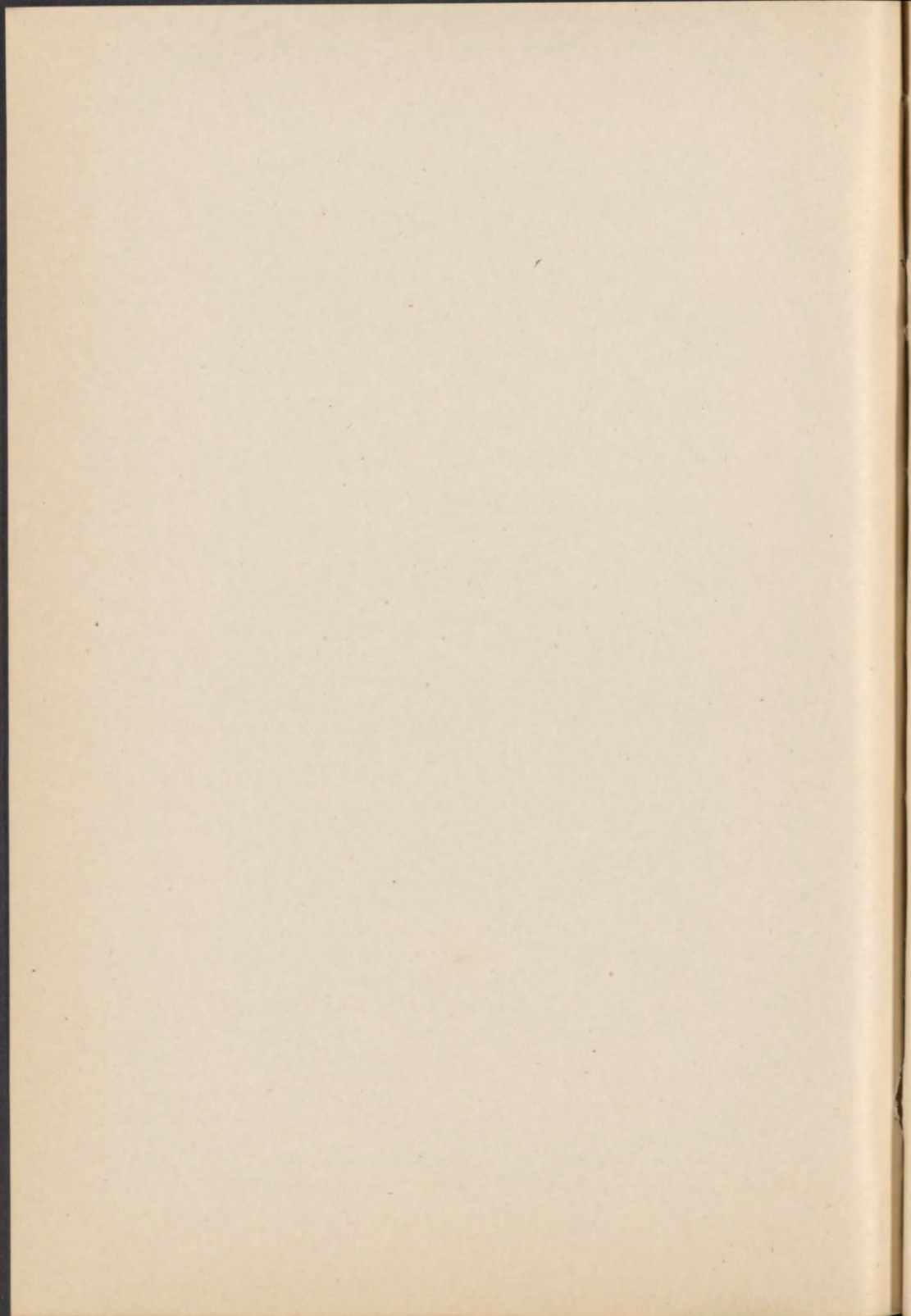
On September 30th, they assign the accounts due them from sales from September 18th-30th, (*Exhibit N* for complainant, p. 124.)

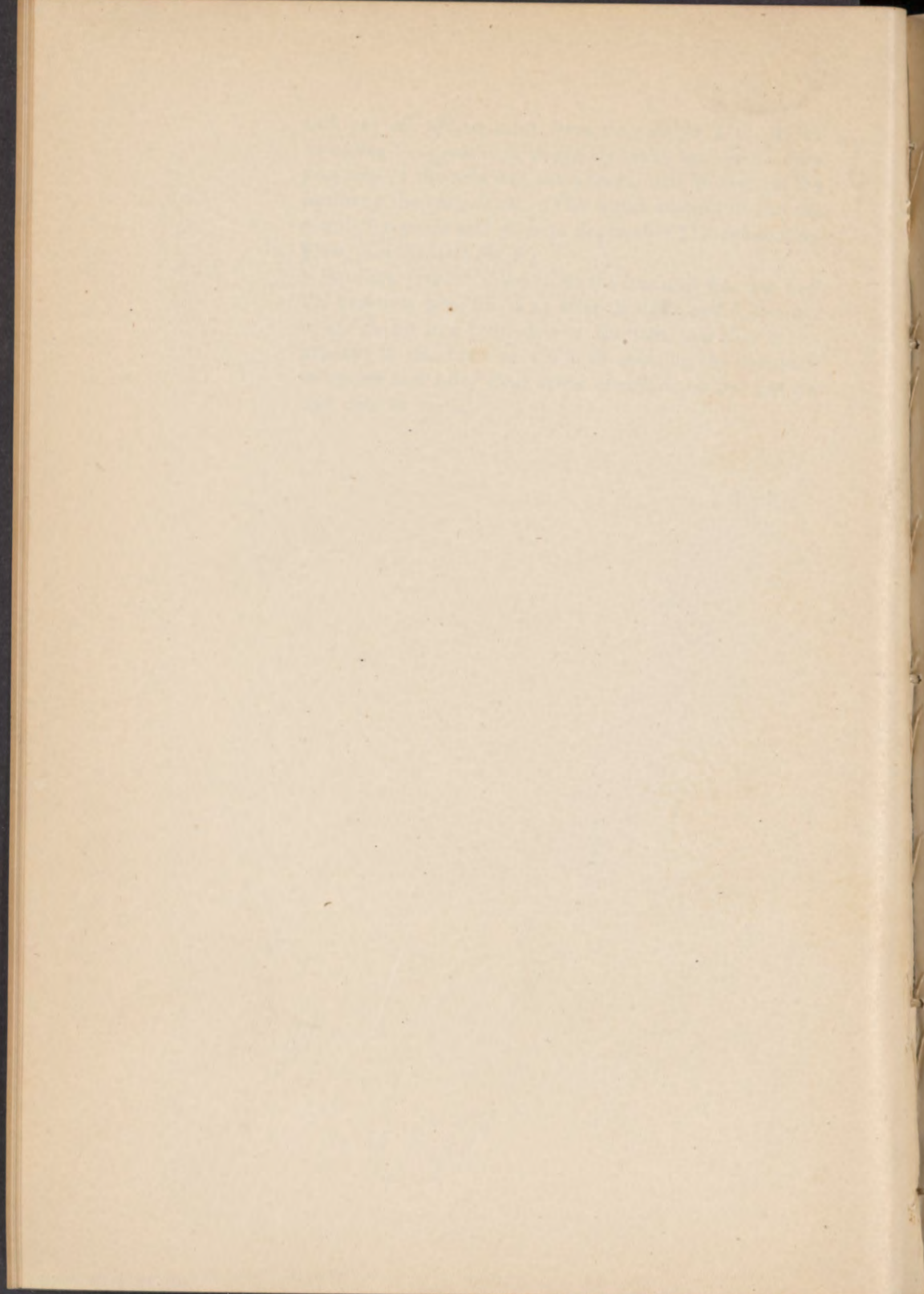
On November 1st, the accounts from October 1st-November 1st, (*Exhibit No. 10* for complainant.)

Squier, in his answer under oath, (p. 21), says that the assignment was of debts *due and owing to the company*. He claims to have lent them money on these assignments to the extent of about \$1500 (p. 133, l. 20, &c.,)

and yet all ~~the~~ the sales from September 11th, which comprise the great bulk of the accounts, *were of his own property*, if the sale was not a fraud, and he and not the company the real owner. The whole amount of the accounts for goods sold prior to September 11th is less than \$400, (see *Exhibit No. 9.*)

Squier's present claim that the business was his and the accounts were his, is an after-thought, and a position to which he has been driven through fear that in the attempt to use his own claim in assisting the company to hinder and delay their other creditors, he has put his own debt in peril.





## N. J. Court of Errors and Appeals.

*Between*

WILLIAM S. SQUIER,

*Appellant,*

*and*

FREDERICK FRELINGHUYSEN,  
RECEIVER OF THE MECHANICS' NA-  
TIONAL BANK AT NEWARK,

*Respondent.*

10

*On Appeal  
from the Vice-  
Chancellor.*

I certify that, on the argument of the above cause before me, The Mechanics' National Bank at Newark, the complainants in said suit in the Court of Chancery, obtained leave to offer in evidence, and afterwards produced and offered in evidence, a certified copy of the execution issued on the judgment in the Supreme Court of New Jersey, obtained by the said Bank against The H. C. Burnet Manufacturing Company, mentioned in the pleadings in said cause, and of the return indorsed thereon, and that such evidence was considered by me in deciding the questions at issue between the parties.

Dated March 14th, 1882.

30

A. V. VAN FLEET, *V. C.*

ADDITIONAL EXHIBIT, ON PART OF COM-  
PLAINANT.

*The State of New Jersey to our Sheriff of our County of  
Essex, Greeting:*

NEW JERSEY—*ss.* :

We command you, that of the goods and  
[L. L.] chattels of The H. C. Burnet Manufacturing  
Company, and Halsted C. Burnet, defendants,  
in your county, you cause to be made the sum of three  
10 thousand eight hundred and sixty-four dollars and forty-  
five cents, which to The Mechanics' National Bank at  
Newark, plaintiffs, lately in our Supreme Court, at  
Trenton, before the Justices of our same Court, were  
adjudged for their damages which they had sustained, as  
well by occasion of non-performance of certain promises  
and assumptions to the said plaintiffs, then lately made,  
as for their cost and charges by them about their suit in  
this behalf expended, whereof the said defendants are  
convicted, as appears of record; and if sufficient goods  
20 and chattels of the said defendants cannot be found in  
your county, whereof the damages aforesaid may be  
made, then we further command you that you cause the  
whole, or the residue, as the case may require, of the  
said damages to be made of the lands, tenements, heredi-  
taments and real estate whereof the said defendants were  
seized on the twenty-ninth day of October, eighteen hun-  
dred and seventy-eight, or at any time afterwards, in  
whose hands soever the same may be; and that you have  
that money before our Justices aforesaid, at Trenton  
30 aforesaid, on the first Tuesday of November next, to  
render unto the said plaintiffs for their damages afore-  
said, and have you then and there this writ.

Witness, MERCER BEASLEY, Esquire, Chief Justice,  
at Trenton aforesaid, the twenty-ninth day of October,  
A. D. eighteen hundred and seventy-eight.

BENJ. F. LEE, *Clerk.*

WHITEHEAD & CONDIT, *Attorneys.*

Recorded in the office of the Clerk of the Supreme  
Court, in A 25, of Process, page 35.

[Indorsed as follows :]  
 NEW JERSEY SUPREME COURT,  
*Essex County.*

THE MECHANICS' NATIONAL BANK AT NEWARK	}	<i>In Case          Fi. fa. de bonis          et terris.</i>	10
<i>vs.</i>			
THE H. C. BURNET MANUFACTURING COMPANY, primarily liable, and HALSTED C. BURNET, secondarily liable.			

Returnable, November Term, A.D. 1878.

WHITEHEAD & CONDIT, *Attorneys.*

Levy damages, . . . . .	\$3,825 61	
Cost, . . . . .	38 84	
	\$3,864 45	20

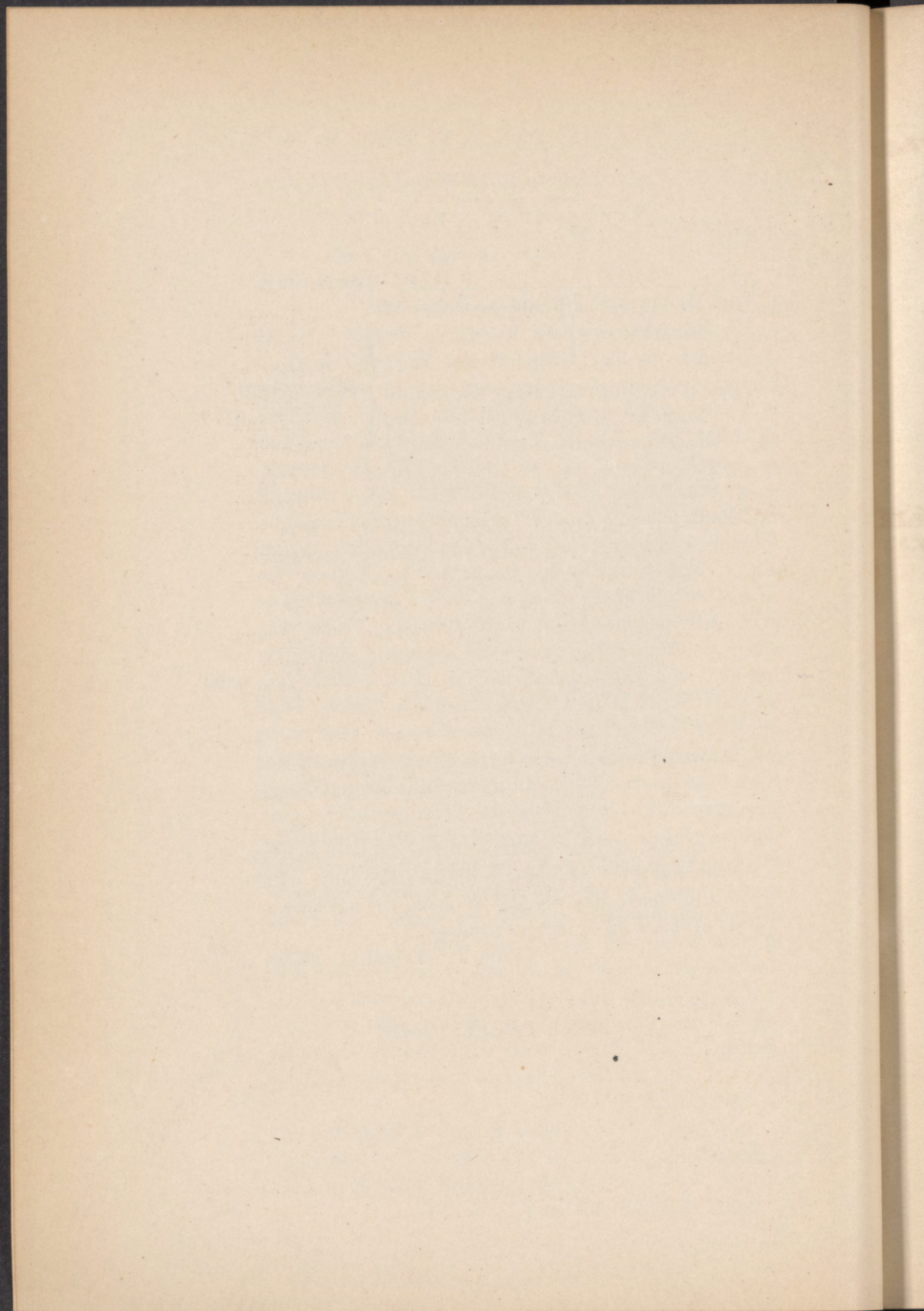
Interest thereon from Oct. 29, 1878, besides Sheriff's execution fees.

Delivered to me, Nov. 1st, 1878, at 2:50 o'clock P.M.  
 JOHN D. HARRISON, *Sheriff.*

I can find neither goods, chattels, lands, tenements, hereditaments nor real estate of the defendants within named in my county whereof to make the damages and costs of this writ, or any part thereof.

JOHN D. HARRISON, *Sheriff.* 30

A true copy,  
 BENJ. F. LEE, *Clerk.*



**EXHIBIT 9, FOR COMPLAINANT.**

In consideration of money loaned and to be loaned, and of the further sum of one dollar, (\$1,) paid by William S. Squier, of Newark, New Jersey, the receipt of which is hereby acknowledged, The H. C. Burnet Manufacturing Company of Newark has sold, assigned and set over, and hereby sells, assigns and sets over with said Squier and his assigns, all the accounts set forth in the schedule annexed hereto, and all the money due and to grow due thereon, to have and to hold the same, and every part thereof, to him and his legal representatives, for his and their own use for ever, as collateral security for said money so loaned, or to be hereafter loaned. 10

And the said company hereby constitute and appoint the said Squier their attorney, in his own or the name of the said company, to sue for, receive and receipt for and compromise all the said accounts of and from the respective parties from whom the same are owing, or are to become due. 20

In witness whereof, the said company hath caused these presents to be subscribed by their secretary, and sealed by their corporate seal.

Dated September 18th, 1878.

J. H. PARKER, *Secretary.*

In the presence of HARVEY SHERWOOD. 30

Sept. 2.	E. Kimpton,	\$14 00
2.	H. W. Scheoeckendecker & Co.,	9 50
2.	Wilbur & Hastings,	12 61
2.	B. Illfelder & Co.,	45
2.	S. W. Twining,	42
4.	Wilbur & Hastings,	4 04
4.	D. D. Cooms,	75
4.	Thos. O'Kane,	5 00
4.	Zion Co-operation Med. Inst.,	62 18 40

# 108.9

	5.	Robert Wilkes & Co.,	6 50	
	5.	Rich. Marsh,	17 50	
	6.	Tower M'f'g. Co.,	4 56	
	6.	Cushing & Bro.,	133 50	
	6.	Bremmer & Bro.,	10 64	
	7.	Richmond, Backus & Co.,	22 90	
	7.	Thos. O'Kane,	4 38	
	7.	Decker, Smith & Co.,	18 00	
	10.	W. H. Lyon & Co.,	34 25	
10	9.	B. Illfelder & Co.,	1 74	
	9.	Tower M'f'g. Co.,	1 21	
	10.	L. Heyniger & Co.,	11 25	
	11.	E. H. Cushing,	16 50	
	11.	Sears & Cole,	4 00	286.88
	12.	S. W. Twining,	7 04	4395.88
	12.	Willy Wallach,	5 50	
	13.	Mich. Central R. R. Co.,	15 00	
	13.	Mrs. E. Horden,	8 75	
	13.	Dennison M'f'g. Co.,	3 91	
20	13.	Auerbach, Finch, Culbertson & Co.,	69 00	
	14.	Robt. Wilkes & Co.,	15 00	
	14.	Travis Bros.,	1 75	
	14.	Tower M'f'g. Co.,	1 80	
	16.	Willy Wallach,	5 50	
	16.	Tower M'f'g. Co.,	2 65	
	16.	Isaac Heilbrun,	16 27	
	16.	Cunningham, Curlis & Welch,	46 00	
	17.	Isaac Heilbrun,	25 00	
	17.	Dennison M'f'g. Co.,	19 00	
30	17.	Rich'd. Marsh,	27 50	
	17.	West & Co.,	32 00	
	18.	Powers Paper Co.,	25 15	
	18.	Wm. Bryce,	22 18	

Total

744.88

**EXHIBIT 10, FOR COMPLAINANT.**

In consideration of the sum of one dollar (\$1), paid by William S. Squier, of Newark, New Jersey, the receipt of which is acknowledged, The H. C. Burnet Manufacturing Company of Newark has sold, assigned and set over, and hereby sells, assigns and sets over unto said Squier and his assigns, all the accounts set forth in the schedule annexed hereto, and all the money due and to grow due thereon, to have and to hold the same and every part thereof, to him and to his legal representatives for his and their own use forever. 10

And the said company hereby constitutes and appoints said Squier their attorney in his own or the name of said company, to sue for, receive and receipt for, and compromise all the said accounts of and from the respective parties, from whom the same are owing or to become due.

In witness whereof, said caused these presents to be subscribed by their secretary and sealed by their corporate seal. 20

Dated Nov. 1st, 1878.

J. H. PARKER, *Secretary.*

In presence of,

F. E. CHAPMAN.

Oct. 1.	William N. Townley,	\$	31	
1.	B. Illfelder & Co.,		4 50	
1.	Willy Wallach,		9 00	
1.	J. R. Miller,		6 00	30
2.	Marcus H. Wolf & Co.,		108 25	
2.	Tower Mfg. Co.,		69	
5.	D. H. McAlpen & Co.,		3 00	
2.	Sondheim & Co.,		27	
5.	E. Lyon & Co.,		1 08	
5.	J. M. N. Jones Stationery Co.,		40 00	
5.	“ “ “ “		46 00	
5.	Thos. O'Kane,		4 46	
7.	James Jardim,		28 50	
8.	E. Lyon & Co.,		5 00	40

	8.	Richard Marsh,	30 00
	8.	M. Wirths,	4 50
	8.	Amzi Pierson & Co.,	27 79
	8.	Findler & Webel,	5 00
	10.	Des Forges & Co.,	63 00
	10.	John S. Slott,	29 75
	10.	Tower Mfg. Co.,	82
	10.	Bliss, Barnes & Co.,	14 40
	11.	H. Meigs, Jr., & Co.,	24 00
10	11.	Berlin & Jones Envelope,	15 75
	11.	Ernest Reeston,	21 02
	11.	M. Wirths,	2 75
	11.	Williams & Plum,	50
	11.	H. Bambridge & Co.,	3 75
	12.	I. Heilbrun,	17 50
	12.	L. Heyniger & Co.,	4 50
	12.	W. B. Dicker,	1 50
	12.	H. Bambridge & Co.,	2 50
	12.	Fendler & Wibel,	68
20	12.	Thos. O'Kane,	2 50
	12.	D. D. Cooms,	1 50
	12.	Willy Wallach,	2 00
	14.	R. B. Dovell's Son,	22
	14.	" "	3 37
	14.	C. H. & E. S. Goldsbergh,	11 25
	15.	James Leach,	13 50
	15.	W. G. Johnston & Co.,	22 19
	15.	Western News Co.,	75 00
	15.	White, Stone & Co.,	36 60
30	3.	C. H. Clayton & Co.,	75
	15.	Lewis & Conger,	2 17
	15.	G. W. Carson,	75
	17.	Lewis & Conger,	1 37
	19.	Tuttle & Co.,	2 80
	19.	G. W. Carson,	3 00
	19.	Peast & Co.,	75
	19.	Dennison Mfg. Co.,	23 00
	19.	Willy Wallach,	31 66
	19.	E. Rueston,	10 50
40	19.	L. Goldsmith,	8 00

19.	H. N. Skinner,	2	25	
19.	Eaton, Lyon & Co.,	18	75	
10.	B. Illfelder & Co.,		28	
21.	" "	2	47	
22.	" "		86	
22.	Sondheim & Co.,	3	60	
23.	J. M. W. Jones Stationery Co.,			
24.	Paul Grosser,	27	13	
24.	Chicago, Burlington & Quincy Railroad,	23	50	
25.	D. Bennett & Son,	12	33	10
25.	T. J. Wroe,	36	99	
25.	R. B. Dovell's Son,	3	50	
25.	Hickox Stationery Co.,		38	
25.	Wilbur & Hastings,	1	37	
25.	Cunningham, Curtis & Welch,	29	40	
25.	J. N. Wilkinson,	18	50	
25.	John Borwald,	10	32	
25.	E. R. Day,	8	50	
25.	Dennison Mfg. Co.,	11	00	
26.	E. Rueston,	13	50	20
26.	Thos. O'Kane,	25	00	
26.	Dennison Mfg. Co.,	34	10	
26.	Geo. E. Stevens,	6	50	
26.	Amzi Pierson & Co.,	45	74	
26.	Wm. H. Sayre,	4	29	
28.	American Papeterie Co.,	20	00	
26.	Tuttle & Co.,	4	20	
29.	Amzi Pierson & Co.,	3	42	
29.	Rich'd Marsh,	15	00	
29.	Willy Wallach,	10	50	30
29.	Cobb, Andrews & Co.,	39	00	
24.	J. M. Burnet's Sons,	3	24	
24.	Peast & Co.,		87	
23.	Thos. O'Kane,		37	
28.	J. Eastwood & Co.,	20	00	
30.	Richmond, Backus & Co.,	65	00	
29.	Brown & Warren,		90	
30.	Erb & Brackett Bros.	13	00	
30.	S. W. Twining,	15	00	
30.	Wm. M. Townley,		57	
30.	B. Illfelder & Co.,	1	40	
30.	White, Stone & Co.,	34	00	40

*Total*

9306.30

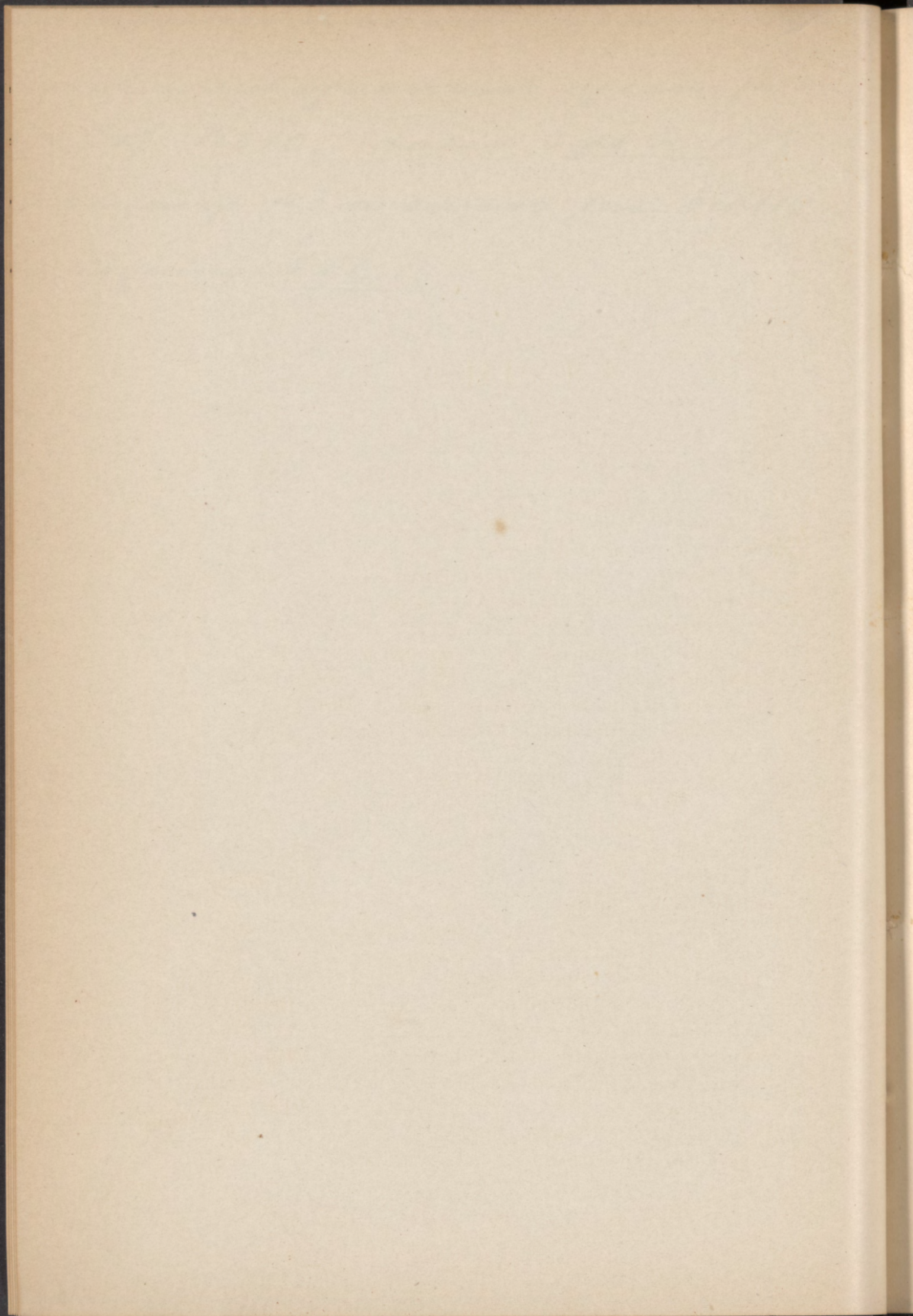
Exhibit 9 for Sept. 70211.

Assignment of accounts of same form  
as Exh. No 10. dated Sept. 30. 1878.

assigning 43 accounts from Sept 19-30.

aggregating 556.13

10.



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To his Honor THEODORE RUNYON, Chancellor of  
the State of New Jersey :

Humbly complaining showeth unto your Honor  
your orators, THE MECHANICS NATIONAL BANK,  
at NEWARK, a banking corporation organized under  
the laws of the United States, and located and do-  
ing business in the city of Newark, in the State of  
New Jersey, that on or about the nineteenth day of 10  
October, in the year eighteen hundred and seventy-  
eight, your orators recovered a judgment in the  
Supreme Court of the State of New Jersey, against  
The H. C. Burnet Manufacturing Company, a cor-  
poration organized under the laws of the State of  
New Jersey, and doing business in the said city of  
Newark, and one Halsted C. Burnet, for the sum  
of three thousand eight hundred and sixty four  
dollars and forty-five cents ; that execution was is-  
sued thereon to the Sheriff of the County of Essex, 20  
who has returned the same unsatisfied, and that  
your orators have not received from said Company  
or said Halsted C. Burnet payment of said judg-  
ment, or any part thereof, but that the whole  
amount thereof is due and unpaid to your orators.

And your orators further show that The H. C.  
Burnet Manufacturing Company was organized and  
commenced business on or about the first day of  
January, in the year eighteen hundred and seventy-  
seven, with a capital stock of twenty thousand 30  
dollars, of which capital, as appears by the certifi-  
cate of incorporation of said company, recorded in  
the Clerk's office of Essex County, stock was issued  
for twenty-five hundred dollars paid in cash, and  
for twelve thousand five hundred dollars for prop-  
erty purchased ; and that the object for which such  
company was formed was the manufacture and sale of  
inks, mucilage and sealing wax ; that the original con-  
sideration of the debt for which said judgment was  
obtained was the said property so purchased by 40

said company on or about the time of its organization; that Halsted C. Burnet was elected president of said company and continued to act as such president until the month of August last, when he claims that by reason of his being no longer a stockholder he ceased to be president of said company, but your orators insist that he is still the president of said company, and will continue so to be until his successor shall have been duly appointed.

- 10 And your orators further show that in the month of July last Ernest E. Coe, a stockholder in said company, and an endorser of the notes on which your orators' judgment was recovered, represented to your orators that said company was solvent and able to pay its debts, and to convince your orators of the truthfulness of his statement exhibited to your orators a written statement, purporting to have been made by the president from the books of the company, showing the condition of the company at that time, whereby it appeared that the
- 20 company had assets in excess of its liabilities of about five thousand dollars.

- And your orators further show that on or about the fourth day of September, in the year eighteen hundred and seventy-eight, one William S. Squier recovered six judgments in the First District Court of the City of Newark against the said The H. C. Burnet Manufacturing Company, each for about the sum of two hundred dollars, and caused execution
- 30 to be issued thereon and delivered to a constable of the County of Essex; that under and by virtue of said executions a levy was made on all the property of the company liable to a levy, which said property was worth as your orators believe at least the sum of five thousand dollars; and that a sale of all of said property was made under said executions to said William S. Squier for a sum sufficient to satisfy said judgments except twenty-six dollars and ninety two cents, and that by virtue of said sale the said
- 40 Squier took possession of said property and is still

in possession, claiming to be the owner hereof, except such part thereof as he may have since sold or otherwise disposed of.

And your orators further show that they had no notice or knowledge of said sale, nor had any reason to suppose that the said Company was in any way embarrassed, but on the contrary believed from the representations made as aforesaid in the preceding month of July, that the company was solvent and able to pay all its indebtedness. 10

And your orators further show that they believe from statements made by officers and employees of the Company since said sale that said judgments were recovered by said Squier in manner aforesaid for the purpose of obtaining a secret and speedy sale of the property, and that said sale was made upon an understanding and agreement between said Squier and said Company that the property so purchased be held and disposed of by him after the satisfaction of his debt for the benefit of the Company, but in such way that the same should not be liable for the payment of the debt of said Company to your orators. And your orators charge and insist that said arrangement and understanding were fraudulent, and made for the purpose of defrauding your orators and protecting the property of the Company, so that the same should not be applied to the payment of its just debts. 20

And your orators further show that after the purchase of the property of the Company by said Squier as aforesaid, the said Squier took possession of the same, and continued the business in the name of the Company, but for his own benefit, and used and applied moneys due and owing to said Company on book accounts and bills receivable, amounting to above fifteen hundred dollars, in the purchase of goods and merchandise for carrying on said business, and in the payment of an alleged balance of indebtedness due to him from said Company not included in said judgments. And your orators 30 40

charge that the appropriation of the moneys due to the Company in manner aforesaid was made without any proper transfer or assignment of the same to him by the Company, and without any right acquired by him under said judgment; that said moneys belonged to said company, and that any goods purchased therewith and any profit derived therefrom became the property of the Company, and that your orators are entitled to have the same applied to the payment of their said judgment.

10 And your orators submit and insist that by reason of the fraudulent agreement made between said William S. Squier and the Company whereby the property of the Company was transferred to him under judgments as aforesaid, and by reason of said Squier having continued the business in the name of the Company, and unlawfully appropriated the property and moneys of the Company to his own use, in carrying on said business he, said Squier, became a trustee for your orators and other creditors of said Company, and that he should be compelled by the order of this Court to account for the property and assets so fraudulently appropriated by him to his own use.

20 And your orators further claim and insist that they are entitled to have the sale of said property under said judgments set aside, and to have the said property or the proceeds thereof applied to the payment of the debts of said Company justly and equitably under the direction of this Court.

30 And your orators further show that they have frequently and in a friendly manner applied to the said The H. C. Burnet Manufacturing Company and William S. Squier, and have requested said Squier to re-transfer said property so purchased at said sale to said Company, and to consent to have the sale of the same opened and set aside, and to come to a full and fair account and settlement in respect to said property, and the business carried on in the name of the Company since said sale. And your

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orators well hoped that they would have complied with such reasonable request as in justice and equity they ought to have done. But now so it is, may it please your Honor that the said The H. C. Burnet Manufacturing Company and William S. Squier, the defendants, combining and confederating with other persons to your orators unknown how to injure and oppress your orators, and to defraud them of their just rights in the premises, altogether refused to comply with such reasonable request of your orators. 10  
 or in any manner to come to an accounting for said property and business, or do justice to your orators in the premises.

All which said actings and doings are contrary to equity and good conscience and tend to the injury of your orators.

In tender consideration whereof, and for as much as your orators cannot have adequate relief except by the aid of this Court, where matters of this kind are properly cognizable and relievable. 20

To the end therefore that the said The H. C. Burnet Manufacturing Company and William S. Squier may without oath true, full and perfect answer make to all and singular the premises as fully and particularly as though the same were here again repeated and they thereto particularly interrogated, and that the said sale of the property of the said Company to said William S. Squier may be opened and set aside, and the said William S. Squier be decreed to be a trustee for your orators and other 30  
 creditors of said Company, and to transfer his interest in said property to said Company, and to account for all moneys or property received on account thereof: and that an account be taken of all the dealings and transactions of said William S. Squier in reference to said property since said sale, including said business carried on by said Squier in the name of the Company or otherwise wherein the moneys belonging to said Company collected from the book accounts and bills receivable due to said 40

Company have been used, and that a proper person may be appointed to receive and collect all the outstanding debts and moneys due to said Company or said Squier on account of said property and business, and also to take possession of all the effects and property of said Company, including the property and assets used by said Squier in carrying on the business since said sale, and that the defendants may be ordered to deliver up to such person all the

10 effects and property, books of account, notes, vouchers, and papers belonging to said Company or employed or used by said Squier in carrying on said business since the sale to him as aforesaid, and that the defendants, their servants, agents and attorneys may be restrained and enjoined by the order of this Honorable Court from demanding or receiving possession of any debts, moneys due or belonging to said Company, or resulting from said business carried on by said Squier in manner aforesaid, also from in

20 any manner intermeddling with the books, accounts, and papers relating to said business, or selling or disposing of the property and assets of said company in any way used or employed in carrying on said business since said sale ; and that the said effects and property may be sold and converted into money or disposed of under the order and direction of the Court in such manner that the greatest benefit will be derived therefrom, and the proceeds thereof applied justly and equitably to the payment

30 of the debts of the company, and that your orators may have such further and other relief as the nature of the case may require and may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said The H. C. Burnet Manufacturing Company and William S. Squier, their servants, agents and attorneys,

40 enjoining and restraining them and each of them from

demanding, receiving or obtaining possession of any debts, moneys or property relating to said business due or belonging to them, or either of them; also from intermeddling with the books and papers relating to said business, and from selling and disposing of the property used and employed in said business; and also a writ of subpoena, to be issued out of and under the seal of this Honorable Court, to be directed to the said The H. C. Burnet Manufacturing Company and William S. Squier, commanding them and each of them on a certain day and under a certain penalty therein to be named, to appear in this Honorable Court, then and there to answer this your orator's bill of complaint, and to stand to and perform such order and decree in the premises as to your Honor may seem meet, and as may be agreeable to equity and good conscience. And your orators will ever pray, &c.

WHITEHEAD & CONDIT,

Solicitors and of Counsel with Complainants. 20

New Jersey, ss. :

OSCAR L. BALDWIN being duly sworn, on his oath saith that he is the cashier of the Mechanics' National Bank at Newark, the complainant in the above suit; that the facts, matters and things set forth in the above bill of complaint, so far as relate to the acts of complainant, are true, and so far as relate to the act of others he believes them to be true; and deponent further saith that on the nineteenth day of October, in the year eighteen hundred and seventy-eight, the plaintiff recovered a judgment in the Supreme Court of the State of New Jersey against the H. C. Burnet Manufacturing Company and Halsted C. Burnet for the sum of three thousand eight hundred and sixty-four dollars and forty-five cents; that said judgment was obtained on three certain promissory notes made by the H. C. Burnet Manu- 40

facturing Company to the order of Halsted C. Burnet, and endorsed by one Ernest E. Coe; that said Coe was a large stockholder in said company, and in or about the month of July last endeavored to persuade the complainants to release him from his liability on said notes, because the H. C. Burnet Manufacturing Company were solvent and able to pay their debts; that to convince deponent of the truthfulness of his statements the said Coe showed  
10 deponent a paper purporting to represent the condition of the company, and to have been recently made by the President from the books of the Company; that by such paper it appeared that the company was worth over six thousand dollars in excess of its liabilities; and deponent further saith that when said promissory notes became due about the middle of September last, he for the first time learned that one William S. Squier had purchased  
20 the property of the company at a sale under executions issued on six judgments obtained by him against said company in the First District Court of the City of Newark, amounting to about twelve hundred dollars, and under such sale had taken possession of the property and place of business of the company, and of the books, accounts and bills receivable belonging to said company, amounting to about fifteen hundred dollars, and was continuing the business in the name of the company, and using  
30 in said business moneys collected by him on debts due to the company; and deponent further saith that he is satisfied from statements made by officers of the company since said sale that said judgments were obtained by said Squier against the said company upon an understanding and agreement between him and one James F. Parker, secretary of the company, that he, Squier, should buy in all the property of the company under his judgments, and that the business should be continued in the name of the  
40 company, and that after said Squier had been paid

his debt the property was to be disposed of under the direction of said Parker and other parties interested in the company, for their benefit, and in such way as to prevent the complainants from obtaining payment of their judgment.

That in pursuance of said arrangements, a speedy and secret sale of said property was had under said judgments, and said Parker delivered over to said Squier the books, assets and property of the company, and made an assignment to him of the book accounts and bills receivable. 10

That such assignment was not authorized by any President of the company or any Board of Directors of said company, but was made by said Parker, acting as such secretary, solely of his own motion.

And deponent further saith, that property purchased by said Squier, under said executions, was, as he believes, worth at least five thousand dollars. That Squier purchased the same at the sale for eleven hundred and fifty dollars, nearly the amount due on his executions. That the total amount due him from the company at the time of the sale did not exceed fifteen hundred dollars; that to pay the same he has appropriated and holds, not only the property purchased at the sale, but the book accounts and bills receivable above mentioned. 20

And deponent further saith that execution was issued on the said judgment of the complainants to the Sheriff of Essex, and that he returned the same unsatisfied, and that the defendants in said judgments have not paid any part thereof, but that the whole amount thereof still remains due from the defendants therein. 30

O. S. BALDWIN.

Sworn and subscribed before }  
me, the 18th day of Decem- }  
ber, A. D. 1878. }

E. H. MILLER,  
Master in Chancery.

STATE OF NEW JERSEY, }  
 Essex County, } ss.:

WILLIAM G. BEACH, of full age, being duly sworn, according to law, on his oath, saith that the H. C. Burnet Manufacturing Company was organized and commenced the business of manufacturing and selling ink, mucilage and sealing wax, at No. 64 River street, in the City of Newark, in the month of January, in the year eighteen hundred and seventy-seven; that deponent has had the management of the manufacturing part of the business from the commencement of the business until the present time; that, on or about the eleventh of September last, one William S. Squier took charge of the business, and claimed to be owner thereof by purchase of the property of the company under sales under executions on judgments obtained by him against the company; that deponent had been informed, in the month of August preceding, by  
 10 James H. Parker, the Secretary of the company, that said Squier was to purchase the property of the company in this way, under the understanding and agreement that the business was to be carried on in the name of the company for the benefit of said Squier, until he, Squier, got back this money due him from the company, and then he was to turn over the property to the company; that the object of making this arrangement was to prevent The Mechanics' National Bank and other creditors from  
 20 whom the property was purchased, with which the company commenced business, from obtaining payment of their claims against the company, and to pay such creditors only as sold them goods, in order that the company might continue their business and preserve their credit. Deponent further saith that said Squier, on one occasion, said to deponent that the company could pay all their creditors except The Mechanics' National Bank, and that such was their intention. And deponent further  
 30 saith, that, since the eleventh day of September  
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ber last, the business has been conducted by said William S. Squier, in the name of the company, but, as deponent believes, in the interest of said Squier; that said Squier has assumed the entire control and management of the business, and claims to be the owner thereof.

WM. G. BEACH.

Sworn and subscribed before me, this 19th day of December, A.D. 1878. }

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FRANK M. BABBITT,  
M. C. C.

STATE OF NEW JERSEY, }  
Essex County, } ss.:

ALBERT P. CONDIT, being duly sworn, on his oath, saith: That he is one of the law firm of Whitehead & Condit, the attorneys for the complainants in the suit wherein the judgment referred to in above bill was obtained; that, on the sixteenth day of November last, an order was made requiring Halsted C. Burnet, one of the defendants in said suit, to make discovery, on oath, of his property, before Samuel T. Biglow, Esq., a Supreme Court Commissioner; that deponent conducted the examination under said order, and examined, under oath, James H. Parker, the Secretary of the H. C. Burnet Manufacturing Company; that said Parker, on such examination, among other things, testified as follows, that is to say:

Have been Secretary, I think, since last July, about the time Coe's stock passed from his hands, and he resigned. I was then a stockholder of the company. Had been a stockholder for a few days before my election. James B. Burnet transferred the stock to me (one share, I think.) It was transferred to me to enable me to become a director and officer of the company, and I was made such in

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place of J. B. Burnet. Prior to that time I had been in the machinery business in New York. Mr. H. C. Burnet was President when I was made Secretary. He is not now President. There is not a President now. About the middle of August, I think, the indebtedness of the company to Squier was eleven or twelve hundred dollars. Afterwards, in August, there was a judgment, which he bought, of about one hundred and fifty-three dollars, which was an additional debt. That was the Gouch judgment. There was no arrangement in August between the company and Squier whereby the property of the company was to be transferred to Squier under sales under executions, excepting that Squier bought a judgment, obtained by Gouch, for about one hundred and fifty-three dollars, his object in making the purchase being to secure his claim against the company, amounting to eleven or twelve hundred dollars. No notes were ever given by the company to Squier for this indebtedness, to my knowledge. It was an open account between Squier and the company, I think. The goods were sold upon a credit of thirty days, and several suits were brought by Squier against the company upon the separate bills for the monthly purchase, and my impression was that the object in bringing the suits in this way was to bring the suits within the jurisdiction of the District Courts and obtain judgments speedily. Sales under executions of the company's property were made under judgments obtained in this way. The understanding between me, as Secretary of the company, and Squier was, that, after his debts were paid, the property should be retransferred to the company. There was no conversation between me and Squier as to the object to be accomplished by that arrangement.

I understood the effect of this arrangement to be to leave the bank and the other creditors at the mercy of Squier and the company.

The bills receivable and debts due on book ac-

counts have gone to pay off the creditors of the company, and towards payment of Squier, and for purchases made from time to time for benefit of Squier. They were transferred to Squier by formal assignment since the sale; I think for money advanced by Squier to the company since the sale to pay off the indebtedness of the company by judgment and otherwise.

The amount of the indebtedness of the company to Squier at the time of the sale was about fifteen hundred dollars; it might not have been so much. 10

I made the assignment to Squier as secretary of the company. There was no order given by the directors; I did it by order of some of the stockholders, Sanderson, Wiederspahn and myself; Coe was a stockholder, but did not join; Wiederspahn gave his consent before. The assignment was not made by order of the board of directors; the amounts of the bills receivable and book accounts transferred to Squier was not over thirteen or fourteen hundred dollars; it might not have been quite so much. 20

And deponent further saith that said William S. Squier was also examined under said order, and made answer to certain questions put to him in such examination as follows:

Q. 66 Do you know what became of book accounts and bills receivable due the company, at the time you took possession of the property of the company? 30

A. "I presume they were held in the custody of the company."

Q. "Have you received any portion of them?"

A. "I decline to answer, as the company is not in Court; I am called here to be examined in relation to Halsted C. Burnet matters, and not in regard to the company."

Q. "Were these book accounts and bills receivable ever assigned to you?"

A. "Decline to answer for the above stated reason." 40

And deponent further saith that Squier further testified in said examination as follows: The business is now carried on in the interest of William S. Squier; I am using by consent the name of the H. C. Burnet Manufacturing Company; the secretary of the company gave the consent.

ALBERT P. CONDIT.

Sworn and subscribed before me, this 19th day of December, A. D. 1878. }

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FRANK M. BABBITT,  
M. C. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN—

THE MECHANICS NATIONAL BANK  
AT NEWARK,

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Comp'l'ts,

and

THE H. C. BURNETT MANUFACTURING COMPANY, et al.,

Deft's.

On Bill for Relief.

30 The answer of William S. Squier, one of the defendants, to the Bill of Complaint of the Mechanics National Bank at Newark, complainants:

1. This defendant, now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to answer unto,  
40 he answers and says that he admits that the said

complainants are a banking corporation, and doing business as such as stated in their said bill of complaint; that he does not know on what day the said complainants recovered their said judgment in the Supreme Court of the State of New Jersey, nor whom said judgment was recovered against, nor for what amount, nor whether any execution was ever issued thereon to the Sheriff of Essex county, or to the sheriff of any other county in the said State of New Jersey, nor whether the same was returned unsatisfied or not, nor whether the said complainants have received anything thereon from any source, or whether the whole amount of said judgment of the said complainants is still due and unpaid, except as stated in said bill of complaint, and therefore leaves the complainant to make such proof thereof as they shall be advised it is necessary for them to do. 10

And this defendant, further answering, admits that the said The H. C. Burnet Manufacturing Company was organized, and commenced business about the time stated in said bill of complaint, but as to how the same was done this defendant is ignorant; that he admits the object for which the said The H. C. Burnet Manufacturing Company was organized to be true as stated in said complainants' bill of complaint; that he does not know what the original consideration was for the judgment of the said complainants, except as stated in the said bill of complaint; that he admits that the said Halsted C. Burnet was the president of said company, but as to the exact time he ceased to act as such president this defendant cannot state, nor whether the said Halsted C. Burnet is, or can still continue to act as such president. 20 30

3. And this defendant, further answering, says, that he does not know anything about one Ernest E. Coe as stockholder of said The H. C. Burnet Manufacturing Company ever going to the said complainants, or what he said or represented to 40

them about the affairs of said company, nor what papers or statements the said company then produced, or what they contained, nor by whom they were made, or for what purpose, except as stated in said bill of complaint, and this defendant respectfully insists and charges that the acts and representations of said Coe, or of the said company, or of any of them to said complainants, are not of any force or binding on this defendant, because this  
10 defendant says that he was not a party thereto, and was not cognizant of the same when done.

4. And this defendant, further answering, says, that upon information received that there were judgments being recovered against the said The H. C. Burnet Manufacturing Company, and with the knowledge that said company were indebted to him for a very considerable amount for money loaned and for goods, wares and merchandise sold and delivered to them at their request, and fearing that  
20 he was in danger of losing his said claims as aforesaid, on or about the twenty-ninth day of August last past, he caused six suits to be entered in the First District Court of the City of Newark, in said State of New Jersey, and summons were issued thereon returnable on the fourth day of September then next; that said summons were duly served on one James H. Parker, the secretary of said company, and that on said fourth day of September last past judgments were rendered thereon for the  
30 amount of the following bills, viz:

1878.

	450		
	448		
April 10, 3 bags gum, 443 1341-51-1290 a 18c.		\$232.20	
Cr. By over-payment by notes previous,		49.94	
		<u>\$182.26</u>	
	243- 55		
	235- 58		
April 15, 2 cas. v. s. o. shellac 478-123 355a21c.		\$74.55	10
June 21, 1 " " "	186a23½	43.71	
	415		
July 10, 1 bag gum.....	18 397a18¾	72.87	
		<u>\$191.13</u>	
	423		
	431		
July 11, 2½ bags gum, ....178 1032 a 18¾		\$189.63	
41 lbs garnet shellac, ..... a 20		8.20	
		<u>\$197.83</u>	20
	300		
July 12. 1 Bag Gum, 54, 246 a 18¾.....		\$45 20	
	224		
" " 1 Case V. S. O. Shellac, 46, 178 a 22¼		40 50	
" 15. To Cash .....		113 00	
		<u>\$198 70</u>	
	242-66		
	235-64		30
	237-60		
August 10. 3 cases V. S. O. Shellac			
524a23 .....	714-190	\$120 52	
To cash advanced.....		75 00	
		<u>\$195 52</u>	
August 27. To cash advanced.....		\$167 71	
" interest ... ..		30 00	
		<u>\$197 71</u>	40

That the whole of said judgments amount to the sum of one thousand one hundred and sixty-three dollars and fifteen cents, and that judgment was rendered also for the sum of three dollars and thirty-two cents, being the taxed costs on each suit; that upon each of said judgments executions were duly issued out of said First District Court of the City of Newark aforesaid, and were delivered to one Patrick C. Smith, one of the constables of said  
10 County of Essex, to execute; that the said Patrick C. Smith, constable as aforesaid, made a levy on all of the personal property of said The H. C. Burnet Manufacturing Company, the defendants named in said six executions, at their place of business Nos. 60, 62 and 64 River street in said City of Newark aforesaid, and then duly advertised the same to be sold at public sale on the premises on the eleventh day of said September last past; that on said day the said property so advertised as aforesaid was  
20 publicly sold to the highest bidder for the same; that there was quite a number of bidders present at said sale; that there was a *bona fide* bid made by one Theodore V. Smith, of eleven hundred dollars for the same; that this defendant then bid fifty dollars more therefor, making his bid the sum of eleven hundred and fifty dollars; that said property was then and there in an open and public manner struck off and sold to this defendant for his said last mentioned bid, he being the highest bidder  
30 therefor; that the said Patrick C. Smith, constable, did, on said eleventh day of September last past, make, execute and deliver to this defendant a bill of sale for the said property of the said The H. C. Burnet Manufacturing Company so purchased by him, a copy whereof is hereto annexed and made a part of this answer; that this defendant upon receiving such bill of sale as aforesaid, took possession thereof as its absolute owner, and has continued so to be to the present time except of such  
40 parts thereof as he has since sold and disposed of; that

said property so sold and purchased at said constable's sale by this defendant did not bring enough to pay and satisfy his said six judgments, interest and costs, by seventy-six dollars and ninety-two cents, which still remains unsatisfied and unpaid ; that this defendant believes and states it to be true that said property so purchased by him was not worth at the time of said sale any greater amount than he bid and paid for the same, but on the contrary he has been informed that said property was not worth over the sum of eleven hundred dollars, and that too providing that a lease could be procured for the occupancy of said premises for the purpose of carrying on said business of manufacturing inks, mucilage and stationers' materials. 10

5. And this defendant, further answering, says that he does not know whether or not the said complainants had any notice or knowledge of said sale as aforesaid, or whether they were aware or had any reason to suppose that the said The H. C. Burnet Manufacturing Company were in any way embarrassed, or what their belief was in regard to the same except as stated in their said Bill of Complaint ; but this defendant respectfully insists and charges that that is no just reason or cause why the said sale and transfer to this defendant, as aforesaid, of said property by said Patrick C. Smith, constable, should be set aside and declared to be fraudulent and void so far as it concerns this defendant. 20 30

6. And this defendant, further answering, denies that there was any arrangement or agreement either express or implied between the defendant and the said The H. C. Burnet Manufacturing Company or with any of its officers or stockholders that he was to obtain his said judgments as aforesaid against the said company for the purpose of obtaining a secret or speedy sale of the property of said company, or that said sale was made upon any express or implied understanding, arrangement or 40

agreement between this defendant and said company or with any of its officers or stockholders that the property so purchased by this defendant was to be held and disposed of by him, and after the satisfaction of his debt for the benefit of said company or any of its officers or stockholders in any way or manner, that the same should not be liable for the payment of the debts of said company to the said complainants, or of any of its other creditors, or that

10 said sale was made for the express and implied purpose of defrauding the said complainants, or any of the other creditors of said company, or for the express or implied purpose of protecting the property of said company, so that the same should not be applied to the payment of its just debts.

7. And this defendant, further answering, admits that after he purchased the property of the said The H. C. Burnet Manufacturing Company at said constable's sale, and after the transfer of said property to

20 him by said Patrick C. Smith, Constable, by said bill of sale as aforesaid, he took possession of the same as absolute owner thereof, and ever since that time has continued to carry on the business in the name of the said The H. C. Burnet Manufacturing Company, with the consent of the only officer at that time or now of the said company, one James H. Parker, the Secretary thereof; that it has been carried on in the name of the said company for the reason

30 of using their trade mark only, which this defendant considered to be of great use, value and benefit to him because of said company being established in business, their goods being well-known to the public, and said company having considerable trade therein as such; that this defendant well knew that if he attempted to carry on said business in his own name and without using the name of said company as a trade mark, that it would become necessary for him to incur great expense in order to introduce said goods to the public, which said expense he wanted to avoid if possible, as he then be-

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lieved he would lose enough therein without incurring that expense as aforesaid; but this defendant avers and respectfully insists and charges that said business has been carried on since he took possession thereof after said sale and transfer by bill of sale by said Patrick C. Smith, constable, of said property of said company as aforesaid for his own exclusive personal use and benefit.

8. And this defendant, further answering, denies that he has used and applied any of the moneys due and owing to said The H. C. Burnett Manufacturing Company, either on book accounts or bills receivable, or both, amounting to about Fifteen hundred dollars in the purchase of goods and merchandise for carrying on said business since said sale and transfer to this defendant by said Constable as aforesaid, but this defendant avers the truth to be that after the sale and transfer to this defendant by said constable as aforesaid, and at the special instance and request of the Secretary of the said The H. C. Burnet Manufacturing Company, the said James H. Parker, he did advance the said James H. Parker, as the Secretary of said company, from time to time about the sum of fifteen hundred dollars, and in consideration thereof he took a transfer and assignment of the bills receivable and book accounts due and owing to said company as collateral security therefor, from said Parker as its secretary and only officer of said company at that time, as he was then informed, amounting in the neighborhood of about the sum of nineteen hundred dollars, but this defendant insists and charges that he has only received from all such sources about the sum of six hundred and fifty dollars, the remainder having been collected and appropriated by the officers and agents of the said company; that the said company now are indebted to him in about the sum of eight hundred and fifty dollars, that being the balance due this defendant of said moneys so advanced to said company since

said sale and transfer to this defendant by said constable as aforesaid ; therefore this defendant respectfully submits, insists and charges that the moneys so collected by him as aforesaid on said book accounts and bills receivable he had the legal and equitable right to apply them to the payment and satisfaction of the amounts of money loaned by him to said company since said sale and transfer by said constable to this defendant as aforesaid, and that neither the said complainants nor any of the other creditors of said company are entitled to have the same or any part thereof applied to the payment of their said judgment or any of their other claims against said company.

10 9. And this defendant, further answering, says that he had the legal and equitable right to use the name of the said The H. C. Burnet Manufacturing Company as a trade mark only in carrying on his said business for his own exclusive personal use and benefit.

20 10. And this defendant, further answering, says that since he took possession of said property after said sale and transfer to him by said constable as aforesaid, he has expended a very large amount of his own personal money, to wit, about the sum of twenty-six hundred dollars in the purchase of materials and about the sum of nine hundred dollars in the payment of wages to the employees in order to carry on said business successfully ; that he has paid off and taken an assignment of a judgment against said The H. C. Burnet Manufacturing Company in favor of one Jacob and William Gouch for about the sum of one hundred and fifty dollars.

30 11. And this defendant, further answering, says that soon after said sale and transfer to him by said constable as aforesaid, to wit, in the latter part of the month of October or early in November last past, he was informed that the said complainants had stated that the said sale and transfer to this defendant by said constable as aforesaid was fraudu-

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lent and for the purpose of covering up the said property of said The H. C. Burnet Manufacturing Company in order to defeat them, the said complainants, in securing their claim against said company; that upon receiving such information he addressed and sent a friendly letter to one Oscar L. Baldwin, who is the cashier of the complainants, stating to him that he, this defendant, had heard it reported that it was said by the said complainants that the sale and transfer to this defendant of said property by said constable, as aforesaid, was a fraudulent one and done for the purpose of covering up the property of said The H. C. Burnet Manufacturing Company, so that no creditor could get their money therefrom. That this defendant there stated that said sale and transfer to him by said constable, as aforesaid, was a *bona fide* and legal one and for what his said judgments were for, and there offered to said Baldwin the refusal to take said property from this defendant, if the said Baldwin would reimburse him for the amount of his said judgments and the money he had expended since said sale and transfer to him, as aforesaid by said constable, amounting to about the sum of thirty-five hundred dollars; that this defendant did not receive any reply thereto from said Baldwin; that in a short time thereafter he met the said Baldwin, cashier, as aforesaid, and then and there this defendant made the same offer to said Baldwin or to any one else who might want it, as he had in his said letter, as aforesaid, to said Baldwin; that said Baldwin refused to accept said offer, stating that it was too much to give for the same, and did not then give this defendant any reason to suppose but what he, the said Baldwin, thought that said judgments, sale and transfer, as aforesaid, were all straight and *bona fide* on the part of this defendant.

12. And this defendant, further answering, says that after the said sale was concluded, as aforesaid, and the transfer of said property made, executed and

delivered by said Patrick C. Smith, constable, to this defendant, he told the said James H. Parker, secretary, as aforesaid, that if the said company or any one else would raise enough money to pay and satisfy his said judgments, interest and costs against said The H. C. Burnet Manufacturing Co., he would make a transfer to said company or to any one else of the property so purchased by him; that all he wanted was to get his money back out of said purchase, and did not wish to carry on the business,  
 10 only to secure his said claims, as aforesaid.

13. And this defendant, further answering, says that the books of said company were not transferred to this defendant, but have always been in the possession of said James H. Parker as secretary of said company, as aforesaid.

14. And this defendant, further answering, says that he never conversed with one William G. Beach on the subject of said sale and transfer, as aforesaid,  
 20 and that he never told said Beach that the said The H. C. Burnet Manufacturing Company could pay all of their creditors except the said complainants, and that such was the intention of said company, as this defendant never was made cognizant of what said company intended to do in the matter.

15. And this defendant, further answering, says that he has been informed and believes to be true that the said The H. C. Burnet Manufacturing Company have been and still are endeavoring to negotiate for  
 30 a loan in order to take back from the defendant said property now owned and held by him; that the said complainants have been informed of such facts and requested by said company to defer their proceedings until such negotiations were completed.

16. And this defendant, further answering, says, that the proceedings from the time of the issuing of the summons in said First District Court of the City of Newark, aforesaid, on which said judgments are founded, until the completion of the transfer of said  
 40 property of said The H. C. Burnet Manufacturing

Company to this defendant, by said constable as aforesaid, are all legal and regular, and are now on file in the office of the Clerk of said First District Court of said City of Newark, to which said proceedings, or a certified copy thereof, this defendant begs leave to refer, if it be necessary so to do.

17. And this defendant, further answering, says : that he has every reason to believe that the proceedings by the complainants against this defendant in this Honorable Court were started by the said complainants conspiring with others unknown to this defendant, in the name of said complainants, and have been carried on for the express purpose and intent of injuring this defendant in his said credit and business ; that he has offered to them, through their said cashier, Oscar L. Baldwin, to transfer said property to them, or to any one they may choose to hold the same for them, on their paying to this defendant the amount of his said judgments, interest and costs, together with the amount he has since expended in carrying on said business, and that they have refused to accept all such offers. 10 20

18. And this defendant, further answering, denies that the said complainants or any one for them have ever frequently, and in a friendly manner, applied to this defendant and requested him to re-transfer the said property so purchased at said constable's sale back to said The H. C. Burnet Manufacturing Company, or to any one else, or requested him to consent to have the sale of the same opened and set aside, or to come to a full and fair account and settlement in respect to said property and the business carried on in the name of said company since said sale, as charged in their said Bill of Complaint ; but on the contrary, this defendant has always been willing, and here tenders himself ready and willing, to transfer to the said complainants, or to any one else whom they may choose to hold the same for them, the said property now owned and held by him, upon their paying to this defendant the amount of 30 40

his said judgments, interest and costs, together with the amount of money he has expended since the said sale and transfer by said Patrick C. Smith, constable, as aforesaid, to him in carrying on said business.

19. And this defendant, further answering, avers : That his said judgments are legal and regular, and for goods, wares and merchandize sold and delivered to said The H. C. Burnet Manufacturing Company  
 10 by him, and for money loaned said company at the times and dates specified therein ; that all the proceedings thereafter thereon were done according to law, and with no fraudulent intent and purpose on the part of this defendant or of any one acting under his direction and behalf ; that the said sale was a *bona fide* one, and the property was sold for its real value and more, and the transfer thereof made according to law to this defendant by said Patrick C. Smith, constable, as aforesaid ; that the  
 20 assignment and transfer to him by the Secretary of said The H. C. Burnet Manufacturing Company, the said James H. Parker of the bills receivable and book accounts, as aforesaid, was done as collateral security for said money so loaned by this defendant after the said sale and transfer of said property by said constable to him, and not for the purpose of liquidating his said judgments ; and that he has carried on said business for his own exclusive personal use and benefit, and has expended large sums  
 30 of money therein since said sale and transfer aforesaid to him by said constable, and that the use of the name of said The H. C. Burnet Manufacturing Company was as a trade-mark only by this defendant since said sale and transfer by said constable, as aforesaid, to him while prosecuting his said business ; and the express purpose and intent of said complainants, and others acting in concert with them, to injure him in his said credit and business, this defendant therefore respectfully submits and  
 40 insists that he ought not to be liable nor should not

be called upon to make any account or statement  
 whatever, or to deliver to any one any of his said  
 books or papers by order of this Honorable Court,  
 as to his actings and doings in this behalf; that the  
 said judgments, executions and sale of said property  
 by said constable should be confirmed as being legal  
 and regular, and without any fraudulent intent or  
 purpose on the part of this defendant or any one act-  
 ing in his interest or behalf for him; that he should  
 not be decreed to be a trustee either for the said com- 10  
 plainants or any of the other creditors of said The  
 H. C. Burnet Manufacturing Company, nor to re-  
 transfer his interest or any part thereof in said  
 property so purchased by him at said constable's  
 sale aforesaid, or what he has added thereto since  
 to said The H. C. Burnet Manufacturing Com-  
 pany, or to any one else without their paying to  
 him the amount of his said judgments, interest  
 and costs, and also the amount expended by him 20  
 since said sale and transfer by said constable, in the  
 purchase of the materials and the amounts paid for  
 wages and expenses incurred in carrying on said  
 business and a reasonable profit thereon, that he  
 should not be decreed to said complainants or any  
 other creditors of said, The H. C. Burnet Manufac-  
 turing Company, the amounts he has collected on  
 said bills receivable and book accounts; that the  
 transfer and assignment to him by said James H.  
 Parker, as Secretary of said The H. C. Burnet  
 Manufacturing Company should be confirmed as 30  
 being valid, bona fide, for a good and legal consid-  
 eration, and without any fraudulent intent or purpose  
 on the part of this defendant, and that no person  
 should be appointed by this honorable court to take  
 charge of the business of this defendant, or of the  
 effects and property in said business or any part  
 thereof to settle the same, but that the said com-  
 plainants should be decreed to pay over to this de-  
 fendant such amount as shall be ascertained and  
 fixed by this Honorable Court as reasonable and fair 40

in lieu for his compensation for the stoppage of his said business and sale of materials, &c., by said complainants, and that this defendant may have such other and further relief as shall seem meet and agreeable to equity and good conscience.

And this defendant denies all unlawful combination and confederacy in said bill charged without this, that any other matter or thing material for this defendant to make answer unto and not herein  
 10 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 and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays that a decree may be made by this Honorable Court, in compliance with the nineteenth section of this answer, and that he be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

20 JOHN LILLY,  
 Solicitor for and of Counsel with Defendant.

NEW JERSEY, ss. :

WILLIAM S. SQUIER, the above-named defendant, of full age, being duly sworn according to law, on his own oath deposeth and saith that the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others he believes them to  
 30 be true; that the consideration for his said six judgments against The H. C. Burnet Manufacturing Company was for goods, wares and merchandise sold and delivered by him to said company, and for money loaned; that the whole amount thereof was past due when said judgments were obtained in said First District Court of the City of Newark; that he held no other security for any part of his claims as aforesaid; that they are correctly copied in the foregoing answer; that the amounts of money he  
 40 has put in said business since said constable's sale,

the amount paid for wages, the amount advanced to said company, and the balance still due him from them are correctly stated; that the amount due him on said executions is correctly stated; that there was no understanding or agreement between this deponent and the said The H. C. Burnet Manufacturing Company, or any of its officers or stockholders, either express or implied; that this deponent was to obtain his said judgments against the said company for the purpose of obtaining a secret and speedy sale of the property of said company, or that said sale was made upon any express or implied understanding or agreement between this deponent and said company, or with any of its officers or stockholders; that the property purchased by this deponent was to be held and disposed of by him after the satisfaction of his debt for the benefit of said company, or any of its officers or stockholders in any way or manner; that the same should not be liable for the payment of the debts of said company to the said complainants, or any of its other creditors; or that said sale was made for the purpose of defrauding the said complainants or any of the other creditors of said company, or for the express or implied purpose of protecting the property of the said company so that the same should not be applied to the payment of its just debts; that the sale of said property by said constable was done according to law, and was a fair and bona fide sale; that he has since the delivery of said bill of sale to him by such constable of the property so purchased by him at said sale, had the absolute possession and control thereof as its owner, and has continued to carry on the business for his own exclusive personal use and benefit, that he has used the name of said company as a trade mark only with the consent of the only officer of said company, one James H. Parker, the secretary; that he has used the same because said company had introduced their said goods very ex-

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tensively and the public knew them as such, and that said goods if sold in his name would have to be introduced to said public at a very great expense; that he has not used and applied moneys of the said company, but that he loaned after he took possession as aforesaid to said company through its Secretary, and took an assignment and transfer of the bills receivable and book accounts; that he has collected only the sum of six hundred and fifty dol-  
10 lars on the same, the remainder being bad debts and collected by the agents and officers of said company, and that said company still owe him about the sum of eight hundred and fifty dollars, the balance due for said money so loaned as aforesaid; that he has expended since he took possession of said property about the sum of twenty-six hundred dollars for materials, and about the sum of nine hundred dol-  
20 lars for wages and expenses incurred in carrying on said business; that he wrote to said Oscar L. Baldwin, cashier of the said complainants, either in the latter part of October or the early part of November, stating that he had heard it reported that said complainants had stated that said sale and transfer to this deponent was fraudulent and for the purpose of covering up the property of said company in order to defeat the said complainants in securing their claim against said company, and telling said Baldwin that said sale and transfer to this deponent by said constable was a bona fide and legal one and  
30 for what his said judgments were for, and there offered to said Baldwin the refusal to take said property from this defendant if the said Baldwin would reimburse him for the amount of his said judgments and the money he had expended since said sale and transfer, amounting to about the sum of thirty-five hundred dollars; that this deponent never received any reply thereto from said Baldwin; that in a short time thereafter he met the said Baldwin and made the same offer to said Baldwin or to  
40 any one else who might want, as he had in his letter

to said Baldwin; that said Baldwin refused to accept said offer, stating that it was too much to give for the same, and said Baldwin did not then give this deponent any reason to suppose but what said Baldwin thought said judgments, sale and transfer were all straight and bona fide on the part of this deponent; that he did offer after he took possession of said property to said Parker as Secretary as aforesaid, to transfer to said company, or to any one else, the said property, if the purchaser would pay him the amount of his judgments, interests and costs, the reason being to get rid of said business and get back the money justly due him from said company; that he never had the possession of the books of said company, they always being in the hands of said Parker, the secretary, and still are; that he never conversed with one William G. Beach on the subject of said sale and transfer, as aforesaid; that he never told said Beach that the said company could pay all of their creditors except the said complainants, and that such was the intention of the company; that he has every reason to believe that these proceedings have been commenced by the said complainants and some other persons in the name of the said complainants, and are carried on for the express purpose and intent to injure this deponent in his said credit and business; that the said complainants have at different times caused his checks on them to be protested for want of funds to meet the same, when the fact was that this deponent had more than enough money deposited in their said keeping to pay said checks and still leave a balance in favor of this deponent; that he believes that the property purchased by him at said sale brought all it was then worth in the market, and more; that the only reason he purchased the same was to save, if possible, his said claims against said company; that he never knew anything about Ernest E. Coe going to said complainants, nor what then transpired, or any-

thing about said matter, except as he read the same in their said bill of complaint; that said complainants, nor no one for them, came to him and requested him to retransfer said property, or anything of the kind, as stated in their said bill.

WILLIAM S. SQUIER.

Sworn and subscribed to this }  
 6th day of January, A. D. }  
 1879, before me, }

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FLAVEL MCGEE,

M. C. C.

New Jersey, ss.:

JAMES H. PARKER, of full age, being by me duly sworn according to law, on his oath saith that he is the secretary of The H. C. Burnet Manufacturing Company, one of the defendants named in bill of complaint filed by the Mechanics' National Bank at Newark, and has been such secretary since about  
 20 the 26th day of January last past; that he has heard the bill and affidavits annexed thereto filed in said cause read, as also the answer of the defendant, William S. Squier; that Halsted C. Burnet was the president of said company until in the month of August last past, since which time there has been no regularly elected president of said company; that this deponent was always under the impression and belief that the property of said company  
 30 was purchased from one James M. Trimble, and not from said Halsted C. Burnet, as alleged in said bill; that he does not know anything about any statement ever being shown or presented by one Ernest E. Coe to the said complainants; that the first he ever heard or saw said statement was before one Samuel F. Bigelow, Supreme Court Commissioner, at the examination on an order of discovery as to the property of Halsted C. Burnet, before him a short time since; that the amounts of the six judg-  
 40 ments recovered by said William S. Squier against

said company, are for the amounts of six different bills of said Squier rendered to said company, for goods, wares and merchandise, and for money loaned said company by said Squier; that the whole amount thereof was due and owing from said company to said Squier before said suits were begun in the First District Court of the City of Newark; that said Squier did not hold at that time or since anything as collateral security for said claim against said company; that the said goods, wares and merchandise so charged were delivered to said company by said Squier, and the prices as stated in said bills are correctly stated; that the amount of money loaned and the times are correctly stated; that none of said judgments were obtained by said Squier against said company, under any understanding or agreement on the part of this deponent or of said company and said Squier for the purpose of obtaining a secret and speedy sale of the property of said company, or any part thereof, nor was there any understanding or agreement with this deponent or said company and said Squier, that the sale of the property under the executions issued on said judgments was made for the purpose, that said Squier should hold the property so purchased and be disposed of by him after the satisfaction of his debt for the benefit of said company or of any of its officers or stockholders in any way or manner; that the same should not be liable for the payment of the debt of said company to the said complainants, or that said judgments were obtained and said sale made for the purpose of defrauding the said complainants or any of the other creditors of said company, or for the purpose of protecting the said property of said company, or any part thereof, so that the same should not be applied to the payment of its just debts; that after said suits were commenced he had a conversation with one William G. Beach, in which he told said Beach that one Gouch had recovered a judgment against said company,

and that there were other suits against said company, and unless some arrangement could be made with those persons that the property would have to be sold ; that the company had no defence to any of said suits which were being brought in the First District Court of the City of Newark ; that he never told said Beach that said Squier was to purchase the property of the company for its benefit, under an understanding or agree-

10 ment that the business was to be carried on in the name of the company for the benefit of said Squier, until he (Squier) got back the money due him from the company, and then he, said Squier, was to turn over the property to the company ; that the object of making this arrangement was to prevent the Mechanics' National Bank (the complainants) and other creditors from whom the property was purchased, with which the company commenced

20 business, from obtaining payment of their claims against the company, and to pay such creditors only as sold them goods, in order that the company might continue their business and preserve their credit, or words to that effect, but he did say to said Beach that if said Squier did purchase said property, he wanted to make some arrangement with said Squier by which, if the company could raise enough money to pay his claim and interest, that then said Squier should retransfer said property to the company again ; that he was always told and

30 believed that the debt for which the complainant's now seek to recover against the said company and said Squier was the individual debt of said Halsted C. Burnet and Ernest E. Coe, and not the debt of said company, and had such belief and understanding at the time he conversed with said Beach ; that he believes the reason that said Squier took the proceedings he did was for the purpose of securing the amount due him from said company as aforesaid ; that he was present at the sale and heard the

40 bidding for said property ; that there were quite a

number of persons present at said sale ; that said sale was a fair *bona fide* transaction ; that said Squier took possession thereof upon the delivery of the bill of sale by said Patrick C. Smith, constable, and has held the same ever since as the absolute owner and possessor ; that shortly afterwards he borrowed from said Squier, for the benefit of the company, a considerable amount of money from time to time, in the aggregate about the sum of fifteen hundred dollars ; that in order to secure said Squier for said moneys so loaned as aforesaid, he assigned and transferred the bills receivable and book accounts to said Squier as collateral security therefor ; that the said Squier has collected therefrom only about the sum of six hundred and fifty dollars, the remainder having been collected by the agents of said company and its officers, except the bad debts ; that the said company now are indebted to said Squier in the sum of eight hundred and fifty dollars, being the balance due of said money loaned since said Squier took possession thereof as aforesaid ; that this deponent believes that the stock, fixtures and materials which were sold at said constable's sale to said Squier were not worth over the sum of twelve hundred dollars, although they were inventoried to a much larger amount ; that this deponent, as secretary of said company, gave permission to said Squier to use the name of said company as a trade-mark only ; that the business, although it has been carried on in the name of said company ever since said Squier took possession thereof, yet it has been conducted for the exclusive personal use and benefit of said Squier ; that said Squier has put in said business, since he took charge thereof, about the sum of twenty-six hundred dollars for materials and about the sum of nine hundred dollars for wages and expenses in prosecuting said business ; that the reason said Squier wanted to use the name of said company as a trade-mark was because the goods of said company had been well introduced in

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the market before the public at a very considerable expense, and they were known as such, and for said Squier to have engaged in said business in his own name would have made him incur a very heavy expense to introduce said goods as aforesaid, which he desired to avoid if possible; that said Squier has paid off and taken an assignment of the judgment of one Gouch against the said company, amounting to about the sum of one hundred and fifty dollars;

10 that this deponent, ever since he became the secretary of said company, has been and still is the custodian of all the books and papers belonging to said company; that said Squier never has had possession thereof; that this deponent, with the money he received from said Squier as aforesaid, paid off a large number of the claims that were pressing against said company, some of which were judgments in the State of New York, and for the expenses of their traveling agent and for materials bought

20 by said company previous to said Squier taking possession; that said assignment and transfer of the bills receivable and book accounts were made by this deponent, as secretary of said company, to said Squier, before the summons was issued on which the said complainants' judgment was recovered, as set out in their said bill of complaint; that this deponent never advised said Squier in which way he should pursue to secure his said claims against said company, nor did he advise him in any way

30 throughout the whole proceedings; that he remembers said Squier stating to this deponent, after he took possession, that if the said company or anyone else would pay him the amount of his judgments, interest and costs, he would retransfer said property to said purchaser; that said company have been trying, and still are, to negotiate for a loan in order that they may take said property back from said Squier and continue their old business; that said complainants were notified of such fact

40 and requested to delay their proceedings until the

negotiations could be concluded; that this deponent was a clerk for said company before he became its secretary; that when said company began business they did so at No. 88 McWhorter street, in said city of Newark, and afterwards removed to Nos. 60, 62 and 64 River street, in said city, about the first day of April, eighteen hundred and seventy-seven.

J. H. PARKER.

Sworn and subscribed to, )  
 this 6th day of January, ) 10  
 A. D. 1879, before me, )

FLAVEL MCGEE,

M. C. C.

STATE OF NEW YORK, )  
 City and County of New York, )

THEODORE V. SMITH, of full age, being by me duly sworn according to law, on his oath deposeth and saith that he has been engaged and still is in 20  
 the business of stationers' hardware, as agent for the J. O. Smith Manufacturing Company for the past twenty years; that he is well acquainted with the value of the stock, materials and fixtures of a factory for the making of inks, mucilage and stationers' materials; that in the month of September last past he went to the city of Newark, N. J., to attend the sale of the property of the H. C. Burnet Manufacturing Company, advertised to be sold on the eleventh day of said September, under the 30  
 six executions issued out of the First District Court of said city of Newark in favor of one William S. Squier; that before said sale took place he made a careful examination of the stock, materials and fixtures so advertised to be sold as the property of said H. C. Burnet Manufacturing Company, for the purpose of ascertaining their value, with a view of purchasing the same at said sale; that he, after such examination, fixed the value of said stock, materials and fixtures in said building, so adver- 40

tised as aforesaid, at the sum of one thousand one hundred dollars, provided that a lease could be procured for the occupancy of said premises for the purpose of carrying on said business of manufacturing inks, mucilage and stationers' materials; that he was present at said sale, and was one of the bidders thereat; that he made a *bona fide* bid of eleven hundred dollars for the stock, materials and fixtures so advertised as aforesaid, and afterwards  
 10 sold to said William S. Squier for the sum of eleven hundred and fifty dollars; that the said stock, materials and fixtures so purchased as aforesaid by said William S. Squier brought at said sale more than they would be worth to me, and a fair price was obtained for them; that after said sale was concluded this deponent made the remark to said Squier that he hoped he would get out safely, that he had paid more than I would have given for the same; that I bid as long as I thought  
 20 it would be safe for me to bid for said stock, materials and fixtures, and that said sale was a fair one, and considerable competition was to be seen thereat.

THEODORE V. SMITH.

Sworn and subscribed to }  
 this 3d day of Jany., }  
 A. D. 1879, before me, }

HENRY C. BANKS,

[L. s.]

Commr. for New Jersey,

3 John St., New York City.

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## IN CHANCERY OF NEW JERSEY.

Between—

THE MECHANICS NATIONAL BANK AT  
NEWARK,

Complts.

and

THE H. C. BURNET MANUFACTURING  
COMPANY and WILLIAM S. SQUIER,  
Defts.On Bill, &c.  
Order.

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Upon reading and filing the Bill of Complaint in the above cause, and the answer of the defendant, William S. Squier, and the affidavits annexed thereto, and hearing the argument of counsel for the complainants, and of the said William S. Squier, upon the application for the appointment of a receiver in this cause, of which application it appears to the Court due notice has been given to the defendants, and it appearing to the Court reasonable and proper that such application should be granted,

It is, on motion of Whitehead and Condit, solicitors and of counsel with complainants, ordered that Elias N. Miller, Esquire of the City of Newark, in the County of Essex, be and he is hereby appointed a receiver in this cause to receive and, collect all the outstanding debts and moneys due to said Company, also to take possession of the books of account, and of all of the effects and property of said company, and to further take possession of all the goods, property and effects, and purchased by said Squier under executions against said company, and also all the property into the purchase or manufacture of which any of the property or proceeds of property purchased by said Squier under executions obtained against said company, or any of the

moneys collected or received by said Squier from bills receivable and accounts due to said company have in any way entered or been used, upon his filing a bond with the clerk of the Court in the penal sum of five thousand dollars, with sufficient surety, to be approved by Staats S. Morris, Esq., conditioned for the faithful performance of his duties as such receiver, and it is further ordered that said receiver, from time to time, make report to the  
 10 Court of all his doings in this behalf, and that either of the parties to said cause or said receiver shall be at liberty to apply to the Court from time to time for such further order or directions as may be necessary.

Dated January 7, 1879.

Respectfully advised,

A. V. VAN FLEET,

V. C.

Endorsed : Filed January 7, 1879.

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## IN CHANCERY OF NEW JERSEY.

BETWEEN—

THE MECHANICS NATIONAL BANK  
at Newark,

Comp't,

and

THE H. C. BURNET MANUFACTUR-  
ING COMPANY, et al.,

Deft's.

On Bill, &amp;c.

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The answer of the H. C. Burnet Manufacturing Company, one of the defendants, to the Bill of Complaint of The Mechanics National Bank at Newark, complainants:

1. This defendant now, and at all times hereafter, 20  
saving and reserving to itself all manner of benefit  
and advantage of exception to the many errors and  
insufficiencies in the complainant's said bill of com-  
plaint contained, for answer thereto or unto so much  
and such parts thereof as this defendant is advised is  
material for it to make answer unto, it answers and  
says that it admits that the said complainant is a  
banking corporation, organized and doing business  
as such, as stated in its said bill of complaint.

2. And this defendant, further answering, admits 0  
that the said the H. C. Burnet Manufacturing Com-  
pany was organized and commenced business about  
the time, in the manner and for the purpose as  
stated in the said bill of complaint.

3. And this defendant, further answering, says  
that it admits the recovery of said judgment in the  
complainant's said bill of complaint mentioned, but  
it insists and charges that the same was of no va-  
lidity upon the grounds hereinafter mentioned and  
stated.

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4. And this defendant, further answering, says that on the twenty-seventh day of December, in the year eighteen hundred and seventy-six, Oscar L. Baldwin, the Cashier of the said The Mechanics National Bank at Newark, the complainant herein ; Joseph Hanson, of the firm of Condit, Hanson & Van Winkle ; Joseph W. Plume, the Cashier of the Manufacturers National Bank of Newark, and Albert P. Condit, one of the solicitors of the complainant herein, as principals, and without disclosing any agency, entered into an agreement, in writing, with one Halsted C. Burnet (a copy of which said agreement is hereto annexed and made a part of this answer) in and by which said agreement they conveyed to the said Burnet "all the goods, merchandise and personal property of every kind and description in the building and factory known as number 88 McWhorter street," for the sum of twelve thousand five hundred dollars, for the payment of which the said Burnet made and delivered to the said parties hereinbefore mentioned his four several personal promissory notes, each dated December twenty-seventh, in the year eighteen hundred and seventy-six, and payable to the order of himself in the following sums: One for two thousand five hundred dollars, payable twenty-four days after the date thereof; one for five thousand one hundred and twenty-five dollars and thirty-nine cents, payable three months after the date thereof; one for three thousand seven hundred and twenty-four dollars and sixty-one cents, payable three months after the date thereof, and one for eleven hundred and fifty dollars, payable three months after the date thereof.

5. And this defendant, further answering, says, that on the twentieth day of January, in the year eighteen hundred and seventy-seven, the said Halsted C. Burnet sold and conveyed, by his bill of sale in writing, to one James M. Trimble, all the goods, chattels and property so purchased by him as afore-

said, for the sum of twelve thousand five hundred dollars ; to which said bill of sale this defendant begs leave to refer if it becomes necessary so to do.

6. And this defendant, further answering, says, that on the twenty-fourth day of January, in the year eighteen hundred and seventy-seven, the said James M. Trimble sold and conveyed, by his bill of sale in writing, to the said H. C. Burnet Manufacturing Company, this defendant, all the goods, chattels and property conveyed to him by bill of sale of the said H. C. Burnet, for the sum of twelve thousand five hundred dollars ; to which said bill of sale this defendant begs leave to refer if it becomes necessary so to do. 10

7. And this defendant, further answering, says, that the said Burnet did pay with his own money portions of the said notes according to the terms of said agreements, to-wit: about the sum of seven thousand four hundred and seventy-one dollars and eighty-two cents ; that on or about the sixth day of October, in the year eighteen hundred and seventy-seven, he applied to the said Oscar L. Baldwin, the cashier of the complainant herein, for an extension of time in which to pay the balance due by him on his said notes, one of which was then owned and held by said complainant ; that said Baldwin, as such cashier, insisted and required as a condition to granting any extension, that he, the said Burnet, should give the notes of this defendant in payment thereof, and that said notes should be indorsed by one Ernest E. Coe. 20 30

8. And this defendant, further answering, says, that the said Burnet, fearing his said personal notes would be protested and his own credit injured, then and there, under the compulsion and fear aforesaid, made, as required by said Baldwin as such cashier, three several promissory notes of this defendant, each bearing date October sixth, eighteen hundred and seventy-seven, payable to the order of said Halsted C. Burnet, three months after the date 40

thereof, for the following amounts: one for two thousand five hundred and eighty-two dollars and thirty-six cents; one for one thousand eight hundred and seventy-nine dollars and fifty-one cents, and one for five hundred and eighty dollars and thirty-one cents; all of which said notes were signed "H. C. Burnet, Treas.," and indorsed by the said Burnet and the said Coe; which said notes were then and there delivered to the said Baldwin, to  
 10 take up and pay the said notes of the said Burnet; and the said Baldwin, as such cashier, in consideration thereof, then and there delivered up and surrendered to the said Burnet all of his said personal notes remaining unpaid; to all which said notes, agreements and receipts this defendant begs leave to refer if it becomes necessary so to do.

9. And this defendant, further answering, says, that the said Burnet made this defendant's said notes, and delivered the same to the said Baldwin,  
 20 without any order, direction or authority of the Board of Directors of this defendant, either express or implied, and that the same said notes were given to pay his personal indebtedness, and were not given in payment of any debt of this defendant; and that thereafter the said Burnet himself paid out of his personal funds on said notes about the sum of twelve hundred and fifty dollars, and for the balance of the said notes the said complainant obtained judgment against this defendant by default, for the  
 30 amount alleged in its bill of complaint.

10. And this defendant, further answering, says, that the reason why the said judgment so obtained by default against this defendant was that the said Burnet, upon whom the summons was served, had ceased prior thereto to be a stockholder and officer and to have any interest, or to hold any position in the said The H. C. Burnet Manufacturing Company; and that a few days after such service of the said summons the said Burnet delivered the copy thereof  
 40 left with him to one James H. Parker, the secretary

of this defendant, who immediately thereafter, and before the time to plead had expired, procured the advice of counsel with reference to a defence to such action, and that he was advised by two different counsel that this defendant could not make a defence to said action, as this defendant was not in Court; that said Burnet having ceased to be a stockholder or officer of this defendant, there had been no legal service of the summons on this defendant.

10

11. And this defendant, further answering, says, that the said property sold to the said Burnet, and conveyed to him by the agreement hereinbefore mentioned, a copy of which forming a part of this answer, was the property, goods and chattels of the said complainant, The Manufacturers' National Bank of Newark and Condict, Hanson and Van Winkle, and that the said parties and individuals named in said agreement as the vendors were the representatives who had obtained the said property 20 for their principals at sheriff and constable's sales had under executions against the property of one Mary Ann Dovell, and for money due from the said Mary Ann Dovell to the complainant herein, The Manufacturers National Bank of Newark and Condict, Hanson and Van Winkle, who employed said Burnet as their agent, who continued to be and remain such agent until said sale to him as aforesaid,

12. And this defendant, further answering, says, that there was due from the said H. C. Burnet 30 and paid by him, for the purchase of the said property, the sum of twelve thousand five hundred dollars, by his said promissory notes—the one for twenty-five hundred dollars, payable twenty-four days after the date thereof, which was given to the said Albert P. Condit, and which was paid at its maturity; the one for the said sum of five thousand one hundred and twenty-five dollars and thirty-nine cents, to the said complainants; the one for the said sum of three thousand seven hundred and 40

twenty-four dollars and sixty-one cents, to the said Condit, Hanson & Van Winkle, and the one for the sum of eleven hundred and fifty dollars, to the said The Manufacturers' National Bank of Newark.

10 13. And this defendant, further answering, says that all the said notes and those given in renewal thereof, and the notes of this defendant, made as hereinbefore stated, and given to pay and take up  
 20 the said Burnet's personal notes, were in the care, custody, charge and keeping of the said Oscar L. Baldwin, the cashier of the said complainant—the one for the sum of five thousand one hundred and twenty-five dollars and thirty-nine cents was owned and held by said complainant, together with all the renewals thereof; and the said corporate notes given by said Burnet to pay the same, and all sums of money and installments paid thereon were paid  
 30 by the said Burnet, out of his personal funds, to the said Baldwin, as such cashier, and were given by him, apportioned among all the parties, *pro rata*.

14. And this defendant, further answering, denies any and all knowledge of any representation made by one Ernest E. Coe, and avers that if any such representations were made by said Coe as charged in the said bill of complaint, the same were made without the knowledge, direction or authority of this defendant.

30 15. And this defendant, further answering, denies that there was any arrangement or agreement, either express or implied, between this defendant and the said William S. Squier by which he was to obtain his said judgments, as aforesaid, against this defendant for the purpose of obtaining a secret and speedy sale of the property of this defendant, or that the said sale was made upon any express or implied understanding, arrangement or agreement  
 40 between this defendant and the said William S. Squier.

16. And this defendant, further answering, says, that it was indebted to to the said William S. Squier in a considerable amount for money loaned and advanced by said Squier to said defendant, and for goods, wares and merchandise loaned and delivered to it by him, and that on or about the fourth day of September, in the year eighteen hundred and seventy-eight, in the First District Court of the City of Newark, six judgments were entered up against this defendant in favor of the said Squier, amounting to all including the taxed costs on said six judgments to the sum of eleven hundred and eighty-three dollars and seven cents, and that executions were issued on the said six judgments out of the said First District Court of the City of Newark to one Patrick C. Smith, one of the constables of the County of Essex, to execute; that the said Patrick C. Smith made a levy on all of the personal property of this defendant, and then duly advertised the same to be sold at public vendue on the eleventh day of said September; that on said day the said property so advertised as aforesaid was put up and publicly sold to the highest bidder, who was the said William S. Squier, who bid therefor the sum of Eleven hundred and fifty dollars; that there were quite a number of bidders present, and that then and there the said property was in an open and public manner struck off to the said Squier. 10  
20

17. And this defendant, further answering, denies all knowledge of any representations made by any person connected in any manner with this defendant, or by any of its servants, agents, officers or employees to any other person or persons with reference to any cause, matter, transaction or thing connected with said defendant, directly or indirectly, and avers that if any such representations were so made as charged in said bill of complaint, the same were made without the knowledge, direction or authority of this defendant. 30

18. And this defendant, further answering, says that 40

after the said judgment of the said complainant had been obtained they were informed through their said solicitor, the said Albert P. Condit, by the said Ernest E. Coe, that said judgment against this defendant was of no validity, as it had never been regularly and legally served with the summons in said cause; that the said Condit, perceiving the force of such statement, caused supplementary proceedings to be commenced and prosecuted under said judgment against the said Halsted C. Burnet, requiring the said Halsted C. Burnet only (one of the defendants in said suit), to make discovery on oath concerning his property only, and thereby ignoring in said order for discovery any claim whatever against this defendant; that under said order for discovery, the said Condit caused to be subpoenaed the agents, officers, servants, employees, and the Secretary of this defendant, requiring him to produce the books of this defendant, and questioned, inquired of and examined them as to the affairs of said Company, this defendant under the said order for the examination of the said Halsted C. Burnet only, to which petition, order of discovery, and the proceedings thereunder, this defendant begs leave to refer if necessary so to do.

19. And this defendant denies all unlawful combinations 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 and things this defendant is ready to aver, maintain and prove as this honorable court may direct, and it prays to be hence dismissed

with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] T. H. S. VAN RODEN,  
Sol. of Def't.

GEO. C. COWART,  
of Counsel with Def't.

SIDNEY A. SANDERSON,  
Pres't of H. C. Burnet Manuf'g Co. 10  
Attested, JAMES M. TRIMBLE, Secretary

NEW JERSEY, }  
Essex County, } ss :

James M. Trimble, of full age, being duly sworn according to law, doth depose and say : I am the Secretary of The H. C. Burnet Manufacturing Company, the defendant named in the foregoing answer; Sidney A. Sanderson, is the President of the said Company, the seal now affixed to the foregoing answer is the common seal of said company, and said seal was affixed to said answer by virtue of the order of the Board of Directors of said Company. 20

JAMES M. TRIMBLE.

Sworn and subscribed before }  
me, at Newark, N. J., De- }  
cember 13, 1879. }

J. WHITEHEAD,  
Master in Ch'y of N. J. 30

STATE OF NEW JERSEY, }  
Essex County, } ss.

The answer of the defendants, the H. C. Burnet Manufacturing Company, was taken this thirteenth day of December, in the year eighteen hundred and seventy-nine, before me, under the common seal of the said corporation as by their said seal thereto affixed appears.

J. WHITEHEAD,  
Master in Ch'y, N. J. 40

Agreement made this twenty-seventh day of December, in the year eighteen hundred and seventy-six, between Oscar L. Baldwin, Joseph Hanson, Joseph W. Plume and Albert P. Condit, of the city of Newark, in the county of Essex and State of New Jersey, of the first part, and Halsted C. Burnet, of the same place, of the second part:

Whereas, the parties of the first part have agreed to sell and convey all the goods, merchandise and  
 10 personal property of every kind and description in the building and factory known as No. 88<sup>th</sup> McWhorter street, and all property in any way connected with or used in the business carried on in said factory by the said party of the second part, for the said parties of the first part, or either of them, belonging to them or either of them, and all the books, accounts, rights and credits and debts due and owing to the said parties of the first part, or either of them, in the said business, or connected  
 20 with or resulting from said business; and whereas the consideration money of such sale and transfer is to be divided and paid to and amongst the said parties of the first part in unequal amounts. Now this agreement witnesseth that the said parties of the first part for and in consideration of twelve thousand five hundred dollars lawful money of the United States, to be paid as hereinafter mentioned, by the said party of the second part, have bargained and sold, and by these presents  
 30 ds grant and convey unto the said party of the second part all the goods, merchandise, tools, dies and personal property of every kind and description in the building and factory known as No. 88 McWhorter street in the said city of Newark, and all property in any way connected with or used in the business of the manufacturing and sale of inks, mucilage, seals and sealing wax and other materials carried on in said factory, for the parties of the first part or either of them by the said Halsted C. Burnet,  
 40 net, belonging to the said parties of the first part or

either of them, and the book accounts, rights, credits, moneys, effects and good will of said business; the property hereby intended to be conveyed includes all the goods and chattels purchased by Albert P. Condit and Joseph Harrison under the attachments and executions against Mary A. Dovell, which have not been sold and are still in said factory, and all good purchased on their account in carrying on said business. And the said parties of the first part each for himself, his heirs, executors and administrators, and not for each other, covenant and agree to and with the said Halsted C. Burnet that if the title to any of said property should prove defective and the said Halsted C. Burnet should sustain loss thereby, or if he should be subjected to suits, costs, loss or expenses in defending his title to the same, that they will repay to said Burnet out of the proceeds of said sale received by them respectively such portion thereof as may be necessary to make good such loss and expense in proportion to the amount received by them respectively out of the consideration money aforesaid, to be paid by the party of the second part, it being understood, however, and agreed by the parties hereto, that this guaranty and indemnity does not extend to or cover the right to use the name of R. B. Dovell's Son in any way in carrying on said business or to the use of the labels, tools, dies, designs, or stamps, to which Mary A. Dovell, or some other person, may claim to have the right of exclusive use, or whereon are cut, inscribed, or impressed the name of R. B. Dovell's son.

And the said party of the second part hereby covenants and agrees to and with the said parties of the first part, their executors and administrators, to purchase said personal property and pay the consideration money aforesaid in manner following, that is to say, twenty-five hundred dollars in cash on the twenty-third day of January next, and the remaining ten thousand dollars in four equal quarter yearly

payments from the date of this agreement, and to give his promissory notes therefor, and to pay and discharge all the debts contracted by said Burnet in carrying on the business for the parties of the first part from September fifteenth, eighteen hundred and seventy-six, to this date, including the rent for the said factory and premises No. 88 McWhorter street from the time the same were occupied and used in carrying on said business for the parties of  
 10 the first part, or either of them.

In witness whereof, the parties hereto have herewith set their hands and seals on the day and year first above written.

	O. L. BALDWIN.	[L. s.]
	JOSEPH HANSON.	[L. s.]
	J. W. PLUME.	[L. s.]
	ALBERT P. CONDIT.	[L. s.]
20	HALSTED C. BURNET.	[L. s.]

Signed, sealed and delivered in the presence of—Note—the words “said,” “either of them,” on 1st page erased before execution hereof.

FRANK M. BABBITT,  
 M. C. C.

30 Endorsed : Filed March 26, 1879.

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General Replication to answer of Wm. S. Squier, filed April 21, 1879.

## IN CHANCERY OF NEW JERSEY.

Between—

THE MECHANICS NATIONAL BANK  
AT NEWARK,

Complts.

and

THE H. C. BURNET MANUFACTURING  
COMPANY and others,

Defts.

On Bill, &amp;c. 10

Upon motion of Whitehead and Condit, solicitors for complainants, it appearing that due notice of the motion has been given to John Lilly, Esq., of counsel with the defendant, William S. Squier. 20

It is, on this twentieth day of May, in the year eighteen hundred and seventy-nine, ordered that the above cause be referred to the Vice Chancellor to hear the same and report thereon, and advise what order or decree should be made therein.

THEODORE RUNYON, C.

Endorsed : Filed May 20, 1879.

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## IN CHANCERY OF NEW JERSEY.

	Between—	}	On Bill, &c.
	THE MECHANICS' NATIONAL BANK		
	AT NEWARK,		
		Complts,	
	and		
10			
	THE H. C. BURNET MANUFACTURING		
	COMPANY, <i>et als.</i> ,		
		Defts.	

To His Honor, THEODORE RUNYON, Chancellor of  
New Jersey :

20 The petition of William S. Squier, of the city of  
Newark, in the county of Essex, and State of New  
Jersey, respectfully represents unto your Honor :

That he feels himself aggrieved by reason of  
the proceedings had in the above-stated cause rela-  
ting to the appointment of a receiver, the injunction  
granted thereunder, and all proceedings that are  
subsequent thereto.

30 That the rule to show cause why a receiver should  
not be appointed, &c., was granted by the Vice-  
Chancellor on the nineteenth day of December last,  
returnable before the Chancellor on the next Mon-  
day, the twenty-third instant. That said rule to  
show cause was then adjourned from time to time,  
until the sixth day of January, last past, at which  
time this petitioner filed his answer to the said bill  
of complaint fully and completely denying all the  
equities of said Bill, &c.

40 That on said sixth day of January, the said rule  
to show cause on Bill and answer were argued be-  
fore the Vice-Chancellor by the counsel of the com-

plainant, and your petitioner, but before said argument took place your petitioner's counsel objected to the said hearing being proceeded with, because there had been no order of reference made by the Chancellor to the Vice-Chancellor, allowing him to hear and determine such rule to show cause, &c., and advise such order as might seem equitable, &c.

That your petitioner, through his counsel, made said protest before said Chancellor, for the reason 10 that he was advised that said order of reference, as required by the statute in such case made and provided, and the rules of this Court, had not been made by the Chancellor, and that said hearing would, therefore, be null and void.

That upon said sixth day of January, aforesaid, the said rule to show cause, &c., after said arguments were had, was adjourned until the following day at three o'clock in the afternoon, for further hearing by said Vice-Chancellor; that upon that 20 day the said objection so raised by your petitioner on the preceding day was again stated to said Vice-Chancellor, before said appointment of Receiver was made. That notwithstanding said objections, the said Vice-Chancellor did upon said seventh day of January, last past, appoint one Elias N. Miller to be the Receiver in said cause, and to take charge, &c., of the property, &c. until the further order of the Court.

That said Receiver did report of his doings and 30 proceedings under date of February 1st and 17th, A. D., 1879, and petition for the power of selling said property so in his hands, and subsequently on the day of last past, an order was made authorizing him to sell and dispose of the same, and he has advertised the same for sale at public vendue on Wednesday, May 21, 1879, at ten o'clock in the forenoon.

That all of said proceedings have been before the Vice-Chancellor, and all orders in reference thereto 40

have been advised by him, and to which or certified copies thereof this petitioner begs leave to refer, if it be necessary so to do.

That your petitioner has made objections to said Vice-Chancellor proceeding with said cause, or making any order therein until the said cause should have been referred to him by the Chancellor, that notwithstanding his said objection, the Vice-Chancellor has overruled them all, and granted said rules  
10 and orders as if said objection had not been made.

That your petitioner is advised that said order appointing said receiver, said injunction, order of sale and in fact everything relating to said appointment of said Receiver and his doings thereunder, were granted or advised by said Vice-Chancellor, to be made without any authority or rule referring said cause to him, from the Chancellor, and that all said proceedings are therefore null and void.

Wherefore your petitioner prays that all said pro-  
20 ceedings relating to said appointment of the Receiver in this cause, Elias N. Miller, and all rules and orders subsequently granted or advised by said Vice-Chancellor, to be made therein, relating in any way to the same, may be set aside and for nothing holden, and that the Receiver may be removed from his said office as such Receiver, and that your petitioner may have such other and further relief as the equity of the cause may seem to require.

And your petitioner in duty bound will ever  
30 pray, &c.

JOHN LILLY,

Solicitor and of counsel with petitioner.

STATE OF NEW JERSEY, }  
Essex County. } ss.:

WILLIAM S. SQUIER, the above-named petitioner, being duly sworn according to law, on his oath de-  
40 set forth in the above petition are true so far as

they relate to his own acts, and so far as they relate to the acts of others he believes them to be true.

Sworn and subscribed to this }  
 21st day of May, A. D. }  
 1879, before me. }

GEORGE F. TUTTLE,  
 Master in Chancery of N. J.

Endorsed : Filed May 21, 1879.

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General Replication to answer of The H. C. Burnet Manufacturing Company, filed December 21, 1879.

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## IN CHANCERY OF NEW JERSEY.

BETWEEN—

THE MECHANICS' NATIONAL BANK  
OF NEWARK,  
Complainant,

*and*

10

THE H. C. BURNETT MANUFACTURING COMPANY and WILLIAM S. SQUIER,  
Defendants.

Before His Honor ABRAHAM V. VAN VLEET,  
Vice Chancellor.

20 Messrs. WHITEHEAD & CONDIT, for Complainants.

Mr. JOHN WHITEHEAD, for the Corporation.

Mr. JOHN LILLY, for WILLIAM S. SQUIER.

Transcript of short-hand report of testimony given  
in the above-stated case, before the Vice-Chancellor,  
at his Chambers, No. 828 Broad street,  
in the city of Newark, N. J., on Wednesday,  
the 21st day of January, 1880.

30

WILLIAM G. BEACH, a witness produced on the  
part of the aforesaid complainants, having been duly  
sworn, deposeth and saith :

*Direct examination* by Mr. CONDIT :

Q. Where do you live ?

A. Newark.

Q. What is your business ?

A. I am a member of the Denison Manufacturing  
40 Co., manufacturing sealing wax.

- Q. In what capacity ?  
 A. I have charge of the factory.  
 Q. What is your age ?  
 A. 28 last month.  
 Q. Where you employed in the summer of 1878 ?  
 A. At the H. C. Burnett Manufacturing Co.  
 Q. In what capacity ?  
 A. I had charge of their factory, manufacturing.  
 Q. Who was secretary of the company at that time ? 10

(By MR LILLY : I object to that. If they want to prove it let them prove it by the books of the company.)

- Q. Who was in charge of the books of the company ?  
 A. James H. Parker.  
 Q. During that period ?  
 A. Yes, sir.  
 Q. Where was the office of the company ? 20  
 A. 60, 62 and 64 River street.  
 Q. Had you anything to do with the books yourself ?  
 A. I assisted Mr. Parker at the books.  
 Q. Are you acquainted with Mr. Parker's handwriting ?  
 A. Yes sir.  
 Q. (Showing witness bill book) There is January, 1878 ; in whose handwriting are the entries on that page ? 0  
 A. That I can recognize as Mr. Parker's handwriting.  
 Q. All of it ?  
 A. Yes, sir ; James H. Parker's.  
 Q. In June, 1878, in whose handwriting are the entries on that page of the bill book ?  
 A. James H. Parker's.  
 Q. And in September, 1878, in whose handwriting are those entries ?  
 A. James H. Parker's. 30

Q. These pencil marks too ?

A. Yes, sir ; I recognize that as his handwriting.

Q. (Handing witness some loose papers). There are some loose sheets of paper, marked 202 and 208 with certain memoranda. Will you please look at these loose sheets and see in whose handwriting those entries are ?

A. The handwriting there I recognize as Mr. Parker's. This checking on the side, I think, are my  
10 own checks. I am posting for Mr. Miller in closing up the books.

Q. I mean the handwriting ?

A. Yes, sir ; that's Mr. James H. Parker's.

Q. On pages 32 to 35 in the book, the small book marked "cash", which Mr. Miller stated contained the entries of the business from September 11th to January 11th, whose handwriting is that ?

A. That is Mr. Parker's.

Q. The entries in the book, from page 180 to page  
20 193, purporting to be an inventory, in whose handwriting is that ?

A. Here is some of Mr. Burnett's, but that is Mr. Parker's, and that is Mr. Burnett's.

Q. You speak now of those footings down below there ?

A. Yes, sir ; all previous to that is Mr. Parker's ; I recognize that (pointing to the footings) as Mr. Burnett's—it is a memorandum at the close written by Mr. Burnett ; it has nothing to do with the in-  
30 ventory ; all the rest is in Mr. Parker's handwriting.

Q. These other books here, Mr. Beach, will you please look at them and see if they are the books of the company used while you were there ?

A. They are the cash book and ledger ; yes, sir.

Q. And this other one, the bill book ?

A. Yes, sir ; I have seen them all used there.

Q. What was this book used for, as far as the entries of transactions in it show ?

40 A. It was originally used by Mr. Burnet when he

acted as agent for the Mechanics' Bank ; it belonged to the old set of books, and after that Mr. Parker used it to make entries of cash in 1878.

Q. After or before the sale ?

A. I think they were made after the sale.

*By* Mr. JOHN WHITEHEAD :

Q. What sale do you refer to ?

A. The sale to Mr. Squier.

*Further Direct :*

Q. What entries did you say were made there since that sale ? 10

A. These entries here in lead pencil in the stock account, 180 to 193 ?

Q. What sale do you refer to ?

A. The sale of September 11th.

Q. Were you there, Mr. Beach, in the employ of the company at the time of that sale ?

A. Yes, sir.

Q. Who had chief charge and supervision of the 20 business at and before the time of that sale ?

A. James H. Parker.

Q. Did you know, prior to that sale, of the indebtedness of the company to Mr. Squier ?

A. I knew that they owed Mr. Squier money ?

Q. Had the company had dealings with Mr. Squier prior to that time ?

A. Yes, sir.

Q. Do you know about any suits that were instituted by Mr. Squier against the company ? 30

A. I knew that Mr. Squier was suing them in the Police Court.

Q. Did you hear for what purpose those suits were brought ?

(Objected to.)

Q. Did you hear any officer of the company say what was the arrangement in reference to those suits ?

(Objected to.)

Q. Did you hear from James H. Parker any statement in reference to the objects for which those suits were brought?

(Objected to.)

Q. What did you hear James H. Parker say in reference to those suits?

(Objected to.)

10 Q. Proceed and state what, if anything, you know of what Mr. Parker said in reference to those suits?

(Objected to.)

BY THE COURT :

Q. Specify the time, in the first place, Mr. Beach, whether it was before or after the constable's sale?

A. Before the sale.

*Further Direct :*

20 Q. Now, proceed and state what Mr. Parker said?

(Objected to. Admitted.)

A. He told me that Mr. Squier obtained judgment against the company in the Police Court and have it sold.

Q. What further, if anything, did he state?

A. Well, I understood him to say that Mr. Squier was going to buy it in to protect himself.

Q. Buy what in?

30 A. Why, the merchandise there in the factory.

Q. What else was said, Mr. Beach?

A. Oh, I don't know ; I don't recollect what else was said ; of course, if it was brought to my mind I could remember.

Q. State your recollection about what occurred—about what Mr. Parker said in reference to those suits and this sale?

A. What he said in reference to those suits and this sale?

40 Q. Yes, the suits you have spoken of?

BY THE COURT :

Q. Did Mr. Parker say anything as to the purpose of Mr. Squier's purchase?

A. I understood him to say it was to protect himself.

Q. Well, do you remember anything else?

A. I don't remember anything else; no, sir.

BY THE COURT: I would suggest whether it is 10  
not proper to put this question: Whether he said  
anything to this witness as to the disposition that  
was to be made of this property after the sale?

(Objected to as improper.)

*Further Direct:*

Q. Did Mr. Parker show you any advertisements of this sale?

A. He showed me a bundle of papers which he 20  
said were the notices of sale.

Q. In reference to these particular suits under which the sale occurred?

A. Mr. Squier's suit?

Q. Yes?

A. Well, he showed me a bundle of papers and told me they were notices of sale that had been put up by Constable Smith.

Q. What did he say about that?

A. He said that they had not been up five min- 30  
utes before they were torn down.

Q. Do you remember the day of the sale?

A. Yes, sir.

Q. Was there any money due to you from the company for wages at the time of that sale?

A. About \$101.32.

BY THE COURT:

Q. Due to whom?

A. Due to me.

40

*Further Direct :*

Q. Did you have any conversation with Mr. Parker about that claim for wages ?

A. Yes, sir.

Q. State what that was, please ?

A. The evening before the sale I asked Mr. Parker about the money, whether he would have any objection if I should put a claim in Smith's hands on the day of the sale, and he said no, but the only  
10 thing he was afraid of would be the knowledge of the sale would be getting out through me to the Mechanics Bank and Condit, Hanson & Van Winkle, and be made public, otherwise he didn't care.

Q. Were you about the premises on the day of the sale, and prior to the day of the sale ?

A. Yes, sir.

Q. What were you doing ; anything in reference to the property ?

20 A. On the day of the sale ?

Q. Prior to the day of the sale and on the day ?

A. Helping Mr. Parker taking account of stock.

Q. How long was you occupied in taking that account of stock ?

A. I don't know ; but to the best of my recollection it was one and a half to two days.

Q. What did you do ?

A. I called off the items to Parker.

Q. Did Mr. Parker take down a particular state-  
30 ment of each item ?

A. I think he did, sir.

Q. Did you put a valuation on the property ?

A. I don't remember whether we put a valuation on the property or not ; I don't think we did at that time ; no, sir.

Q. For what purpose was that inventory made ?

A. I understood it was made in order to have the sale by.

Q. On the morning of the sale were you there ?

40 A. Yes, sir.

Q. Up to what hour ?

A. I think I was up there to between half-past one and two. I know I was there after one o'clock.

Q. Who were there that morning prior to the sale ?

A. I don't know who were there all during the morning.

Q. Just prior to the sale ?

A. Mr. Squier and Mr. Smith from New York, and the Constable Pat Smith, and Mr. Parker and 10 myself.

Q. Were you sent anywhere about the time of the sale or at the sale ?

A. I was sent by Mr. Parker to Centre Market to get a gentleman to come down to the sale.

Q. For what purpose ?

A. To be there at the sale.

Q. Who was that person ?

A. I don't know his name ; I understood that Mr. Squier boarded with him ; I have forgotten his 20 name, although I did know it.

Q. What was his business ?

A. I think he was a vegetable dealer in the market.

Q. Did Mr. Parker state for what purpose he wanted him there ?

A. He told me he expected him down at the sale, and he hadn't come yet, and he wanted me to go up and tell him to come down.

Q. Were you present at the sale? 30

A. No, sir.

Q. How many workmen had been employed up to the day of the sale?

A. How many in the factory?

Q. Yes.

A. I think there were four besides myself; sometimes we had more, sometimes less.

Q. Were they about on that day?

A. They sent them off between 12 and 1 o'clock.

Q. Was there any flag put out? 40

A. I didn't see any, sir.

Q. This person you were sent for, did you see him?

A. No, sir.

Q. What did you learn about it?

A. I learned he had already gone down while I was coming up, so that he must have passed me on the way, as I didn't know the gentleman.

Q. Did you have any talk with Mr. Squier about  
10 the time of the sale in reference to the sale?

A. In reference to the sale?

Q. Yes.

A. No, sir.

Q. Did you have any talk in reference to the object of the sale, what their motive was?

A. No, sir.

Q. Did you have any talk the next day after the sale with Mr. Squier?

A. Yes, sir.

20 Q. What did he say?

A. He told me that he had examined the company, and that they had enough assets to pay every one except the Mechanics' Bank; I asked him how they could do that thing, and he said it could be done.

Q. Did he say anything about the reason for not paying the Mechanics' bank?

A. He said they could not pay the Mechanics' Bank, that they didn't have enough money.

30 Q. Did he say whether they proposed to pay everybody else, or what did he say in reference to that matter, as to paying the other creditors?

A. I don't know as he said anything about paying any other creditors, but he said they could pay them.

Q. Did you say anything to Mr. Squier in reference to your claim for wages?

A. The day after the sale he wanted me to waive my claim that I had put in Constable Smith's hands,  
40 and he told me that if he had anybody in his em-

ploy who acted in that way he would discharge them immediately; he would not have anybody around that would do anything like that.

Q. Did you present your claim for wages to Smith?

A. Yes, sir.

Q. Did he pay you?

A. No, sir.

Q. Well, what became of it?

A. Mr. Smith persuaded me to release my claim; 10 he said the parties would pay me.

(Objected to.)

Q. Did Mr. Squier pay the claim?

A. No, sir.

Q. Did you waive your claim with the constable until after the conversation with Mr. Squier or before?

A. I think it was after the conversation.

Q. Well, did you go down the next morning after 20 the sale?

A. Yes, sir.

Q. For what purpose?

A. To go to work.

Q. Who did you find there?

A. Well, there was only the workmen there when I first went there.

Q. Afterwards?

A. Afterwards Mr. Squier came, and after him 30 Mr. Parker came.

Q. How was the business conducted after that?

A. The same as before.

Q. No change was made?

A. Not that I know of; the only change I made was in the manner of the shipping receipts.

Q. What was that change?

A. I made the shipping receipts out, shipped from the H. C. Burnett Manufacturing Company, and then wrote across the face of the receipts "from W. S. Squier" in red ink. 40

Q. You have said that Mr. Squier was dealing with the company ?

A. Selling their goods; yes, sir.

Q. Prior to obtaining these judgments in the summer, were any goods delivered by Squier to the Company ?

A. Oh, yes, we were receiving goods from him all the time.

10 Q. Do you remember what amount of goods were delivered at any one time ?

A. I think I received the first which was \$400 worth in one shipment.

Q. \$400.

A. Yes, sir.

Q. Did you receive the goods ?

A. Yes, sir.

20 Q. What was your usual practice in reference to it; state what was done in reference to that bill of goods of \$400, and the goods themselves; you received the goods and the bill came with them, did it ?

A. I received that shipment of goods which was shellac and gum arabic, and I received the bill which was in the neighborhood of \$400, and it laid on the desk a month or six weeks, and I wanted to check it off, because I always checked the bills and filed them away, but Mr. Parker told me not to, and finally he took it away and returned me two or three bills for the whole amount, that is the smaller  
30 bills would make up the whole amount of the large bill, but it was made out in two or three smaller bills.

Q. Could you fix the time of that occurrence ?

A. I could not unless I had the receiving book here.

Q. How long after you got the goods was it that this arrangement was made ?

A. I think in June or July; I am not positive.

BY THE COURT :

40 Q. That was when you got them ?

A. Yes, sir.

Q. When were the two or three bills given you ?

A. I should think six weeks, or from four to six weeks afterwards, I received the other bills.

*Further Direct :*

Q. Will you look at that inventory, Mr. Beach, and state if there is anything in that inventory to indicate to you when it was made ?

A. Well, there is an item here of lead pencils, and I know that the lead pencils were only got for the holiday trade, I think of 1877 and 1878, and we had them in packages and did not use them all up, and never sold them, and they were here at the time of taking the account of stock—pen-holders. 10

Q. What would that indicate to you ?

A. I should think it was taken 1878.

Q. It was ?

A. Yes, sir.

Q. Do you remember how the inventory was taken down by Mr. Parker ? 20

A. In lead pencil.

Q. At the time you went around with him ?

A. Yes, sir.

Q. On the day before, and the day of the sale ?

A. Yes, sir.

Q. Was anything said, Mr. Beach, or what, if anything, was said by Mr. Parker or Mr. Squier in reference to the purpose and object of this sale if anything? 30

(Objected to.)

Q. Before or after the the sale, I ask you, whether they said anything in reference to the object of the sale ?

Q. (By THE COURT.) Was anything said by either Mr. Squier or Mr. Parker either before or after the sale as to the purpose or object of the sale ? I think that question is proper. 40

A. Mr. Squier did not say anything to me about it, and I do not know as Mr. Parker did.

*Further direct :*

Q. Was Mr. Burnet anywhere about the premises at or about the time of the sale ?

A. I did not see him at the time of the sale.

Q. Or prior to the sale ?

A. Prior to the time of the sale he was, but I  
10 guess it must have been a month or six weeks before the sale that I saw him there.

Q. After the sale was he there ?

A. He came there, I think, in October.

Q. What time in October ?

A. I cannot tell when ; it was in October some-time ; I know he was helping Mr. Parker on the books.

Recess.

20 Q. (Handing witness a book.) Look at that ; is that the book you referred to in the examination ?

A. Yes, sir ; that is the receiving book.

Q. Can you refer to that book and tell when it was ?

A. July 12, I believe it was.

Q. (BY THE COURT.) The goods were delivered July 12 ?

A. Yes, sir.

30 Q. 1878 ?

A. Yes, sir.

Q. (BY MR. JOHN WHITEHEAD.) That is the \$400 ?

A. It is between \$350 and \$400 ; it is not as large as I thought it was.

Q. And was received when ?

A. July 12.

*Further direct :*

Q. Read the items, Mr. Beach ?

40 A. 488½ pounds of gum arabic.

Q. (By Mr. JOHN WHITEHEAD.) How large is the aggregate?

A. I could not tell unless I had the bill here.

*Further direct:*

Q. Just go on and give the items?

A. There are five items, as follows:

One bag of gum arabic,	488½	
“ “ “ “ “	432½	
“ “ “ “ “	424½	10
“ “ “ “ “	415½ and	
224 pounds of shellac.		

Q. Do you know what gum arabic was worth at that time?

A. I think in the neighborhood of between 18 and 20 cents a pound.

Q. What was shellac worth?

A. I think shellac was worth 20 or 22 cents; I am not positive which.

Q. Do you know what the terms of the sales were upon which they purchased the goods from Mr. Squier?

A. When I first went with the H. C. Burnet Manufacturing Company, they bought them on 30 days, finally he sold them on three months.

Q. That's all.

*Cross-examined by Mr. JOHN WHITEHEAD:*

Q. I understood you to say you were not present at the sale?

A. No, sir; not when the goods were sold.

Q. Then when you speak of certain persons being present at the factory you don't mean present at the sale?

A. They were present when I left the factory to go up and get this gentleman I spoke of, and when I came back they were in the building, where the constable was selling the goods.

Q. Were you there at the time the constable sold the goods?

A. No, sir ; but I heard his voice selling them.

Q. Where did he sell ?

A. In the middle room on the first floor.

Q. Do you know who was there of your own knowledge ?

A. I do not, sir.

Q. Did Mr. Squier retain you in his employment after he took possession ?

A. Yes, sir.

10 Q. At the same salary as you had been paid before ?

A. I think it was up to sometime in November that I was paid the same salary.

Q. Then it was reduced ?

A. Yes, sir.

Q. Before the sale was Mr. Squier there in possession at all ?

A. He was there nearly every day.

Q. In possession of the property ?

20 A. Do you mean before the sale ?

Q. Yes ?

A. No, sir ; not to my knowledge ; after the sale he took possession ; he was the one I was referred to for all orders, and I suppose he had possession ; he was the one that employed me.

Q. And the one that employed the other workmen there ?

A. That is the way that I understood it.

Q. Did he pay you your wages ?

30 A. Mr. Parker paid them to me ; Mr. Squier did not pay me any money.

Q. What position did Mr. Parker have there after Mr. Squier came there ?

A. He kept the books then.

Q. After Mr. Squier went there ?

A. Yes, sir ; the same position that he always had.

Q. Under Mr. Squier ?

A. That's the way I understood it.

Q. Were these goods brought there by Mr. Squier for the operation after the sale ?

A. I don't know ; I sent orders for goods, and I was told to sign the name of the H. C. Burnet Manufacturing Company to all orders.

Q. I asked you whether any goods were brought there for the operation after the sale ?

A. There were goods brought there, I thought you said bought; I am hard of hearing ; I am deaf in one ear.

10

Q. Did you remain in Squier's employ as long as he was there ?

A. I remained there until the holidays, I think it was the day before Christmas.

Q. Did you remain there until the receiver took possession ?

A. No, sir.

Q. Do you know Mr. Frederick H. Smith, Jr. ?

A. Yes, sir.

Q. Did you ever talk with him about his being receiver ?

A. There was a talk of his being receiver.

Q. Is he a relation of yours ?

A. Yes, sir ; he is a cousin of mine.

Q. Was there an understanding that if he was receiver that you should be put in possession of the property under him ?

A. He did not tell me so.

Q. Was there any understanding with any one connected with the complainant ?

30

A. No, sir.

Q. Was there any talk about you being put in possession under Mr. Smith, if he should be appointed Receiver ?

A. I expected to be appointed there if Mr. Smith was Receiver, but I was never told so.

Q. How did you get that expectation ?

A. Well, I thought he would do it, but he never promised me he would do it.

40

Q. Did Mr. Condit, of the firm of Whitehead & Condit, say anything to you about that?

A. No, sir.

Q. Mr. Smith was not appointed Receiver?

A. No, sir.

Q. Who sent these workmen off at the time of the sale?

A. I did

Q. By whose orders?

10 A. Mr. Parker's.

Q. What time of the day?

A. After 12 o'clock—they quit work at 12 o'clock, and he told me to tell the workmen that they could have a holiday, for a pic-nic, for the rest of the day.

Q. For the afternoon?

A. Yes, sir.

Q. Was there a pic-nic?

A. I don't know, but that was his expression.

Q. You say you had a conversation with Mr.

20 Squiers on the day after the sale?

A. Yes, sir; I think it was the day after the sale.

Q. Twelfth of September, 1878—the sale was on the 11th of September and you had this conversation on the day after the sale?

A. Yes, sir.

Q. Do you remember distinctly what was said at that time?

A. Yes, sir.

30 Q. Did not Mr. Squier say to you that Mr. Parker told him that the assets of the company were sufficient to pay all the creditors but the Mechanics Bank?

A. I don't remember his saying that.

Q. Do you say he did not say that?

A. He did not say that.

Q. Mr. Squier did not?

A. I don't remember his saying that?

Q. You had but one conversation with him?

A. That's the only one I recollect of.

40 Q. What makes you remember that?

A. I will tell you the reason why : Mr. Squier of course did not get there until about half-past 9 or 10 o'clock that day, and Mr. Parker was always there in the morning when I got there, but he went to New York the night before, and he had not got there that morning, and Mr. Squier wanted to know where he was, and he seemed to be worried that he was away. Mr. Parker did not get there until 12 or 1 o'clock.

Q. Is that the reason that you remember this 10 conversation so particularly ?

A. Yes, sir.

Q. And that is the only reason ?

A. Well I remember the conversation with him.

Q. What is the reason that you remember it so particularly ?

A. Well just the conversation—I remember it—that was the day; and I remember that circumstance, that he expected Mr. Parker there, and that I got into conversation with him. 20

Q. Who commenced the conversation ?

A. I think Mr. Squier—he and my father had a conversation the day before ?

Q. I asked you who commenced it ?

A. Mr. Squier did, I think.

Q. What did he first say ?

A. He said he did not want my father interfering with him in his business. My father had been trying to press my claim that I had for wages, and Mr. Squier got angry with him, and he told me the next 30 day that he was capable of managing his own business, and did not want my father to have anything to say to him.

Q. What then ?

A. Then I asked him what I was to understand, and he said I was to go on, the same as I was before, and have employment the same as before.

Q. Then what ?

A. Then he spoke about the accounts, that they could pay everybody but the Mechanics Bank. 40

- Q. Did he say he had examined into the asserts ?  
 A. That is what I recollect his saying.  
 Q. You remember that distinctly, do you ?  
 A. Yes, sir.  
 Q. Do you know whether he had examined ?  
 A. I don't know, but he was always there with Mr. Parker.  
 Q. Do you know ?  
 A. I don't know.
- 10 Q. Did you see him ever examine the books ?  
 A. I have seen him look over the books with Mr. Parker.  
 Q. How long before the sale ?  
 A. Well, he was there all that summer.  
 Q. How long before the sale was it that he was examining the books ?  
 A. Well, I don't recollect the date.  
 Q. Can you tell us whether it was a week or two weeks ?
- 20 A. No, sir ; because he was after looking over the book.  
 Q. He was dealing largely with the company, was not he ?  
 A. Yes, sir.  
 Q. This conversation about your father took place after the sale ?  
 A. Yes, sir.  
 Q. You are certain about that ?  
 A. Quite positive.
- 30 Q. And it was in the same conversation that he said he had examined the assets, and there was not sufficient to pay all ?  
 A. Yes, sir.  
 Q. Sufficient to pay all but the Mechanic Bank ?  
 A. Yes, sir.  
 Q. Did he say anything about what the amount of the assets were ?  
 A. I do not recollect his saying that.  
 Q. How did he come to say that to you ?
- 40 A. I don't know how he came to say it to me.

A. Was he in the habit, then, of having confidential talks with you?

A. No, sir.

Q. Had he ever at any time before that?

A. No, sir.

Q. Or since?

A. No, sir.

Q. Your position was what, at that time?

A. I had charge of the manufacturing—manufacturing goods—and superintending it. 10

Q. He knew what your position was, did not he?

A. Yes, sir; I presume he did.

Q. Now you say Mr. Parker showed you a bundle of papers; how large a bundle was there?

A. (Witness illustrated the size by placing his hands a certain distance apart): That big round; he took them out of his middle drawer; he always kept it under lock and key; he opened it and took these papers out the middle drawer.

Q. Was it large enough to clasp it with his middle finger? 20

A. I should think so.

Q. Did you read them?

A. No, sir.

Q. Could you see if they were printed?

A. No, sir.

Q. Were they exposed so that you could see them?

A. No, sir; I think they had an elastic around, but I am not sure. 30

Q. They were not exposed so that you could see whether they were printed or not?

A. No, sir.

Q. But he told you they were notices of sale?

A. Yes, sir.

Q. When was that?

A. I don't recollect the date; I don't remember when it was, but it was one morning that I went down there.

Q. You don't recollect how long it was before the sale?

A. No, sir.

Q. Was it a week or ten days?

A. I don't remember.

Q. You remember the day of the sale, the 11th of September?

A. I think that was the date.

Q. Well, you remember that—was it before or  
10 after the sale that he showed you this?

A. Before the sale.

Q. You cannot tell how long?

A. No, sir.

Q. Have you any sort of an idea how long it was?

A. No, sir.

Q. What impressed upon your mind the fact that it was before the sale?

A. Why he told me so once before that after the notices of sale were up they could be taken down.

Q. Mr. Parker told you that?  
20

A. Yes, sir.

Q. How long before?

A. I don't know; it was early in August I guess.

Q. Early in August?

A. Yes, sir, I think so.

Q. Long before the sale?

A. Yes, sir.

Q. Did that conversation have reference to that sale by Mr. Squier?

A. Yes, sir; Mr. Parker told me there in August  
30 about the sale to Squier or the expected sale to Squier.

Q. In August?

A. Yes, sir.

Q. This sale was in September, and this conversation was in August, when you and Mr. Parker had the talk about the sale to be made by Squier?

A. Yes, sir.

Q. Mr. Parker is dead, is he not?

A. Yes, sir.  
40

Q. He is not here to answer you whether you tell the truth or not?

A. No, sir.

Q. You understand that?

A. I do tell the truth.

Q. I don't question if; I did not ask you that.

Q. You took an inventory the day before the sale?

A. Yes, sir. I helped to take it.

Q. Mr. Parker took down and you called off? 10

A. Yes, sir.

Q. Where is that inventory?

A. I think this is the one in here, sir.

Q. You are not certain whether it is or not?

A. I am quite positive that it is the book he wrote in, and he wrote it in lead pencil.

Q. Is there anything peculiar about it by which you know it?

A. The lead pencils and penholders.

Q. They were bought for the holiday trade in 20 1878?

A. 1877 and 1878.

Q. And there were some remained over not sold?

A. Yes, sir.

Q. Can you tell how many?

A. No, sir.

Q. Have you any idea of the number at all?

A. No, sir.

Q. Can you approximate to it in any way?

A. In the first place there was a full box with a 30 gross in it.

Q. There was a full gross bought?

A. Yes, sir, originally.

Q. How many appear by the inventory to be left?

A. One and a  $\frac{1}{4}$  gross.

Q. One and a  $\frac{1}{4}$  gross?

A. Yes, sir.

Q. And there was a gross bought?

A. There must have been two gross. I could not state positively.

Q. There is  $1\frac{1}{4}$  gross left and only one gross bought ?

A. I said I thought there was one bought. I don't know.

Q. After the sale who ran that business there—Mr. Squiers or you ?

A. Who ran it ?

Q. Yes, who managed it, who conducted it ?

A. I manufactured the goods and shipped them—  
10 that's all I did.

Q. Did Mr. Squier conduct the business—was it for his benefit ;

A. I understood it was to be so ; yes, sir.

Q. Subsequent to the sale did you hear anything said by Mr. Parker about a sale being made of that property to some outside parties ?

A. He told me—but I think this was prior to the sale.

Q. I am asking you about subsequent to the  
20 sale ?

A. I don't remember anything subsequent to the sale ?

Q. When was the suit by Mr. Squier commenced ?

A. I don't remember ; he bought up Mr. Gouch's suit.

Q. I am not asking you about Mr. Gouch's suit. When did Mr. Squier commence suit ?

A. I don't remember.

Q. How long before the sale ?

A. I don't remember.  
30

Q. You testified that you knew Mr. Squier was suing the company ?

A. Yes, sir.

Q. When did you first get acquainted with that fact ?

A. In August sometime.

Q. Were the suits commenced in August ?

A. I don't know that they were.

Q. But you heard of the suit being commenced  
40 in August I understand you ?

A. Yes, sir.

Q. Mr. Squier sold the company largely you say. Did the bills come with the goods always?

A. Not always.

Q. Did they ever come with the goods?

A. I don't know as they did; I don't believe they did.

Q. Was it not the fact that the bills never came with the goods?

A. I don't believe they ever did come. 10

Q. You don't believe they did come with the goods?

A. No, sir.

Q. Now this bill for three hundred and odd dollars, when did that come?

A. I put it down on the date it came, which was July 12; that was the date it was received.

Q. Now, when did the goods come for which that bill was the invoice?

A. I put that down the day they came. 20

Q. I understood you to say that the bills never came with the goods, and now I understand you to say that that bill came on July 12?

A. Oh, I understood you to ask what day the goods came.

BY THE COURT: The witness understood your question to be as to when the goods were delivered.

BY THE WITNESS: Yes, sir, that is the way I understood it.

Q. Now, these goods came July 12; when did 30 the bill for these goods come?

A. I don't remember.

Q. Where is that bill?

A. I don't know; Mr. Parker took it, I believe.

Q. Have you the slightest idea of when that bill was received?

A. No, sir.

Q. Or how long it was after the goods were received?

A. No, sir. 40

Q. You say the bill was divided up; can you tell whether the bill was for goods all furnished on the same day or on different dates?

A. Well, the original bill I had was for all this amount of goods;

Q. The same date?

A. Yes, sir, and the ones I received afterwards were divided into small bills and included in this.

Q. Of the same date?

10 A. There was no other goods of that date.

Q. I understand you to say definitely that the bill of goods of the 12th of July was divided up afterwards into different bills?

A. Yes, sir.

Q. Do you say that?

A. That is the way I saw the bills afterwards.

Q. And were the bills you saw afterwards the bills for the goods delivered on the 12th July?

A. What is that?

20 Q. You say that bill was divided up into different amounts; were those bills which you saw afterwards the bill for the goods delivered on the 12th of July, 1868?

A. They included that bill.

Q. You say that, do you?

A. Yes, sir.

Q. Do you know whether that bill of July 12 was included in any of these judgments of Mr. Squier?

A. I don't know, sir.

30 Q. In whose handwriting were the divided bills that you saw?

A. Mr. Squiers.

Q. In Mr. Squier's handwriting?

A. Yes, sir.

Q. Did you ever see him write?

A. Yes, sir.

Q. Was not there a difficulty there on the part of the Company in getting Mr. Squier to send in his bills?

40 A. Yes, sir.

Q. Did not Mr. Burnet find fault with him for that?

A. Yes, sir; I remember that.

Q. I speak of the bill of July 12th, that first came in in one bill; was that in Mr. Squier's handwriting?

A. The original bill?

Q. Yes.

A. Yes, sir.

Q. And the bills you saw afterwards, were they in Mr. Squire's handwriting?

A. To the best of my recollection they were.

10

Q. Will you say distinctly they were?

A. I wont say definitely now, but I could recognize them if I saw them in the invoice book.

Q. In whose presence did you see these bills?

A. In the invoice book.

Q. In whose possession?

A. In no one's possession.

Q. Where is that?

A. I guess it is here. No, it is not; it is up at Mr. Miller's.

Q. Mr. Squier sometimes furnished goods which were afterwards taken away, did not he?

A. Yes, sir; there was once or twice there he furnished some gum arabic that was not satisfactory.

Q. And those goods were returned to him?

A. Yes, sir.

BY THE COURT:

Q. Nothing was returned to your knowlege except gum arabic?

30

A. That is all I remember, sir.

*Further Cross:*

Q. How were these goods ordered from Mr. Squier?

A. How were they ordered?

Q. Yes; don't I make myself understood?

A. I don't know.

40

Q. All you know is that the goods were delivered at the factory ?

A. Yes, sir.

Q. Who ordered them you don't know ?

A. I don't know.

Q. You had nothing to do with it ?

A. No, sir ; I told them when I wanted goods.

Q. Did you ever have any talk with Mr. Squier as to the goods, and how they were delivered ; did  
10 you yourself ever order any goods from him ?

A. No, sir.

Q. You say the terms at first were 30 days and were afterwards changed ; who told you that ?

A. Mr. Parker told me.

Q. Mr. Squier never told you ?

A. No, sir.

Q. You had no talk with him about that ?

A. No, sir.

Q. You say that only gum-arabic was sent back ;  
20 are you sure of that ?

A. I am quite positive ; I don't remember anything else.

Q. You would not say no gum shellac was returned ?

A. Shellac ?

Q. Shellac, I mean.

A. I don't recollect any shellac being sent back.

Q. You wont say none was returned ?

A. I don't know.

30 Q. You spoke positively awhile ago and said some had been returned ; now I understand you to say you don't know, you don't remember about that ?

BY THE COURT. He said so far as he knew nothing else had been sent back.

Q. How did shellac come there to the factory,—in what kind of package ?

A. Cases.

Q. Let me recall your recollection ; did not some cases of shellac come there to the factory from Mr.

Squier and afterward go back to him, not being satisfactory?

A. I don't recollect any,—no, sir. He used to store shellac there, and sell it to other parties. I don't remember, there might have been.

BY MR. WM. S. WHITEHEAD :

Q. He stored his shellac there?

A. Yes, sir; and he used to sell it to different parties throughout the state. 10

*Further Cross :*

Q. When was it the cases of shellac were stored there?

A. I think it was in the Fall of the previous year he commenced storing them there.

Q. And that ran on through?

A. Yes, sir.

Q. Until the time he took possession?

A. I think the shellac was there at the time he took possession. 20

Q. And shellac went from there to other parties?

A. Yes, sir.

Q. Through the whole of this year?

A. I think so.

Q. How many pounds were there generally in a case of shellac?

A. I think it averaged about 177 pounds of shellac.

Q. Gross or net? 30

A. That is net.

Q. How much in the gross?

A. I don't know, I think the gross will average 40 to 47 pounds.

Q. Were not some of these cases of shellac broken up and part used by the company and part sent elsewhere?

A. I know we used to break shellac up for Mr. Squier; I know he would send shellac there in cases and our hands would break it up and put it back in 40

the case ; I don't think we used any except what we bought.

Q. Would not they go in that condition elsewhere ?

A. Broken up ?

Q. Yes.

A. Yes, sir.

Q. Would you say here, Mr. Beach, that the company would not keep part of what was broken up in that way, and part go elsewhere,—you don't say that, do you ?

A. What's that ?

Q. You would not say that part of that shellac broken up in this way would not be retained by the company, and part go elsewhere ?

A. No, sir, I would not say that.

Q. You said you assisted Parker sometimes in keeping the books ?

A. Yes, sir.

Q. Who had the custody of the books ?

A. Mr. Parker.

Q. After Mr. Squier came there and took possession, did you have charge of the shipping entirely, or somebody else with you ?

A. I had charge of the shipping I think entirely.

Q. Was there much shipping done ?

A. Yes, sir ; we shipped a good many goods. It was the busy part of the year, in September.

Q. How was the shipping done ?

A. By ordinary receipts. The H. C. Burnet Manufacturing Co. shipped to so and so, and across the face of the receipt I wrote, "From W. S. Squier."

Q. The bills that were sent for these goods were sent in the same way ?

A. I did not make the bills out.

Q. Who did ?

A. Mr. Parker. I would charge the goods, and he would make out the bills and send them.

Q. After Mr. Squier took control there, I understand you say you entered into his employment ?

- A. I understood I was employed by him.
- Q. Did not you enter into employment with him ?
- A. I don't recollect any arrangement I made with him.
- Q. Did not you make a bargain with him ?
- A. I don't recollect it.
- Q. How does it happen that afterwards your salary was reduced by him ?
- A. He reduced it through Mr. Parker.
- Q. You went to him to find out what your position was after the sale ? 10
- A. Yes, sir.
- Q. Why did you do that ?
- A. Because I understood he owned the place.
- Q. And you went to him to find out ?
- A. Yes, sir.
- Q. And he told you to keep on just as usual ?
- A. Yes, sir.
- Q. Then did not you make a bargain with him ?
- A. I don't recollect any bargain. 20
- Q. You don't call that a bargain ?
- A. I don't know whether it was or not.
- Q. When he reduced your salary did you make any complaint, or say anything to him about it ?
- A. I don't think I did.
- Q. Did you and he have any difficulty ?
- A. Yes ; I think we did have some difficulty.
- Q. You had some difficulty ?
- A. Yes, sir.
- Q. About the business ? 30
- A. Yes, sir.
- Q. You don't have the kindest feelings towards him ?
- A. Oh, I don't know. I think about as much of Mr. Squier as I do of any ordinary man.
- Q. Did you never have any conversation at all with Mr. Squier about your salary ?
- A. I don't recollect it.
- Q. Do you remember on Saturday night of his

talking to you about it, and telling you your salary would have to be reduced?

A. Oh, yes, sir; I do remember it; but I had forgotten it.

Q. Then your salary was reduced?

A. Yes, sir; Mr. Parker told me before Mr. Squier did.

Q. That all.

*Re-direct:*

10 Q. You were asked the question whether, after the sale, anything was said to you about the sale of this property to other parties? Was anything said to you by Mr. Parker, before the sale, in reference to the sale of this property to any other person?

(Objected to.)

By the COURT:

20 Q. Before the constable's sale, did Mr. Parker say anything to you about selling this property to any other parties?

A. He told me they were going to sell it to Mr. Squier; that was the understanding I had with him that we were going to sell it to Mr. Squier.

(Mr. JOHN WHITEHEAD moved to strike out the answer. Motion denied.)

30 Q. You were asked whether you did not return gum arabic to Mr. Squier, because it was not up to the standard and would not answer the purpose? No, do you remember whether any of this particular lot was returned?

A. I don't think any of this particular lot was returned.

(Witness's attention was called to the large bill of between \$350 and \$400.)

*Re-cross:*

Q. This conversation you have just been asked about, where you say Mr. Parker told you they

were going to sell to Squier, is that the same conversation to which you referred this morning before the adjournment?

A. What conversation is that?

Q. Mr. Condit asked you about some conversation between you and Mr. Parker, before the adjournment, and he also asked you a moment ago about whether you had some conversation with Mr. Parker about the sale of the property to other parties, and you have answered that. Now, I say the 10 answer of you, which you have just given, refers to the same conversation of which you spoke this morning, does it not?

A. I don't know as it was at the same time; I know it was before the sale, I remember.

Q. Did you have more than one conversation with him?

A. Oh yes, sir; he used to be very confidential with me about these matters, and I told him not to tell me about them. I asked him not to tell me; I 20 said, if I am ever in court and am asked about them, I shall have to tell them in that way.

Q. Did you ever tell anybody you would get even with Mr. Squier for cutting down your salary?

A. I don't know; I might.

Q. Do you say you did not?

A. I would not say I did or did not.

Q. You were very mad at him?

A. I should think you would be.

30

By the COURT:

Q. The question to you is, whether you were angry at him?

A. I was angry.

By Mr. CONDIT: We offer in evidence all the books that have been referred to.

(Objected to by Mr. John Whitehead as being no evidence against Mr. Squier.) 40

BY THE COURT: The books will be received subject to your objection; the books are unquestionable evidence against the corporation.

BY MR. JNO. WHITEHEAD: I think so myself.

BY MR. CONDIT: We offer first the judgment. Exhibit 1; Cash Book, Exhibit 2; Ledger, Exhibit 3; Bill Book, Exhibit 4; Cash Book, containing Inventory, Exhibit 5; Loose Sheets, Exhibit 6;  
10 Receiving Book, Exhibit 7.

Complainant rests.

DEFENDANT'S COUNSEL moves to have the bill dismissed on the ground that the complainants have not made out their case.

THE COURT said that if the defendant rested also, he would entertain the motion.

20 DEFENDANT'S COUNSEL said they did not rest.

THE COURT said there were occasions when it would be proper to entertain such a motion, for instance, where the complainant's proofs presented so meagre a case that it would be a waste of time to put the defendants on their proofs, but this was not within that class of cases, and therefore as the defendant did not propose to rest, the Court must refuse to entertain the motion to dismiss the bill.

30 Defendant's Counsel (without opening) called WILLIAM S. SQUIERS, who having been duly sworn according to law, deposeth and saith:

*Direct examination* by JOHN WHITEHEAD, Esq.:

Q. You are one of the defendant's in this case?

A. Yes, sir.

Q. What was your business in 1878?

A. Dealing in chemicals of all kinds, tanning materials, gums, &c.

40 Q. Where was your place of business?

A. No. 6 Pine street, New York.

Q. Did you sell the H. C. Burnet Manuf'g Co. ?

A. I did, sir ; I sold their goods.

Q. Large or small quantities ?

A. Generally small, but in the aggregate they amounted to a good deal.

Q. On what terms ?

A. 30 days.

Q. Were those always your terms ?

A. Yes, sir. 10

Q. Was there any change ?

A. No, sir.

Q. You obtained a judgment against the company ?

A. Yes, sir.

Q. What was the aggregate amount of your judgments about ?

A. I think it was over \$1100.

Q. Prior to the obtaining of those judgments, what conversation, if any, did you have with Mr. Parker, the secretary of the company, or with any one else about any sales under the executions issued under those judgments ? 20

A. About any sales ?

Q. Yes ?

A. You are referring to the judgment ?

Q. The sales under the judgment, prior to the sales under the execution issued on those judgments of yours, what conversation, if any, did you have with Mr. Parker or any officer of the company relating to the sales under those executions ? 30

A. Nothing ; only I told him I was going to sell them out, without they paid me my money.

Q. What understanding or agreement, if any, was there between you and the Company, or any other of its officers relating to the disposition of the property under those sales ?

A. Do I understand you to mean before the sales ?

Q. Yes.

A. There was no understanding whatever. 40

Q. It is charged in the bill filed in this case that there was an understanding or agreement between you and the Company that you should buy this property and hold it for the benefit of the Company; was there any such arrangement or understanding between you and the Company, or any of its officers, prior to the sales?

A. There was not, sir; can I state further?

Q. Yes.

10 A. It would be preposterous to make such a proposition, because no one would know that I would buy the Company out, and—(Interrupted.)

(Objected to, as a matter of argument.)

Q. What arrangement, if any, was there prior to the sale, as to your purchasing the property?

A. None whatever.

20 Q. What was said, if anything, between you and the Company, or any of its officers, prior to the sale, as to your purchasing the property at the sale?

A. Nothing.

Q. You were present at the sale?

A. I was; yes, sir.

Q. At what time in the day did that sale take place?

A. I think, between three and four.

Q. Who was present at the sale?

30 A. There was a number present at the sale—some I knew and some I did not know.

Q. Mention some you knew?

A. There was a man named Sherwood—a man named Smith that I did not know.

Q. First name?

A. Theodore; after the sale I was introduced to him. There were some other people there which I did not know. Mr. Parker was there also.

Q. The Secretary of the Company?

40 A. Yes, sir.

Q. Did any person bid on the property besides yourself ?

A. Yes, sir ; the property was started at about \$900, and run up ; the last bid was \$1,100, except mine, which was \$1,150.

Q. Who started it at \$900 ?

A. I don't remember, really, who started it, but I remember it starting at about \$900.

Q. You did not ?

A. I think not, sir.

10

Q. Mr. Beach says Mr. Parker exhibited to him a bundle which he said were notices of sale, and that they had not been up five minutes before they were taken down,—do you know anything about that ?

A. I do not, sir.

Q. Was there any arrangement, or understanding or agreement, or talk in any way, shape or manner, directly or indirectly, between you and Mr. Parker, by which those notices were to be taken down ?

20

A. There was not, sir.

Q. Prior to the sale, what reference, if any, was made to the notices of sale, in any conversation, if any such took place, between you and Mr. Parker ?

A. There was no conversation in relation to the notices ; I had nothing to do with the notices at all.

Q. Mr. Beach says there was a conversation between you and him the day after the sale, in which you told him that you had examined the assets of the Company, and had ascertained that it could pay all its debts, except those to the Mechanics' Bank—is that true or not ?

30

A. There was a conversation but it is not true in the way he stated it.

Q. What was the conversation ?

A. The conversation was simply this: he said that the company owed him a bill ; I told him I knew nothing about it ; he said the constable had the amount of it in his possession ; I told him the first time I had heard anything of the kind was the

40

night before; I knew nothing about whether the company owed him the money or not, but if the company did owe him the money, from the conversation that I had with Mr. Parker, he said that the company could pay its debts, and if so, I had no doubt that his debt would be paid.

Q. Did you say to him that you had examined the assets of the company?

A. No, sir.

10 Q. Or the books of the company?

A. No, sir; I had not examined them.

Q. Did you know the financial standing of the company prior to the time of the commencing of your suits against the company?

A. Only hearsay.

Q. Only from hearsay; after the sale what did you do with the property of the company that you bought?

A. I took possession of it.

20

(BY DEFENDANT'S COUNSEL: I offer in evidence here, the bill of sale executed by the constable, dated the 11th of September, 1878. Its execution is admitted.)

Q. Is that the bill of sale you received from the constable?

A. It is, sir.

Q. Do you remember when you got it?

A. On the 12th of September.

30

(Bill of Sale. Exhibit A.)

Q. You took possession of the property, you say; what did you do with it?

A. I carried on the business, making inks, mucilage, sealing wax, and so forth.

Q. Who employed the workmen there?

A. I did, sir.

Q. Who paid for them?

40 A. I passed the money over to Mr. Parker, as a

general thing every Saturday night, and he either handed it over or I did.

Q. Did you purchase goods to carry on the business?

A. I did.

Q. Who paid for them?

A. I did.

Q. In whose name were they bought?

A. W. S. Squier.

Q. How was the business conducted after your purchase, as to the care and conduct of it; who cared for and conducted it?

A. It was cared for and conducted under my direction; Mr. Parker did a certain part, and I did the other portion, and I gave my directions through him to the men, and sometimes gave them direct.

Q. What arrangement or understanding, if any, was there between you and the company or any officer of the company, as to the profits or proceeds of the business conducted there by you after that sale?

A. The profits and proceeds, and so forth, of course came to me. I used the company's name and trade mark, by the consent of the secretary, who was the only officer of the company.

Q. Why?

A. Because the trade-mark of the company was valuable, and parties interested in the company—that had put money in the company, were negotiating with me to put the company on foot again, and buy the business out from me; I had no desire to carry on the business—I wanted to sell it.

BY MR. WM. S. WHITEHEAD:

Q. Who negotiated with you?

A. Other parties who had put money in the old company.

BY THE COURT:

Q. The old company; You mean the H. C. Burnet Manf. Co.?

A. Yes, sir.

*Further Direct :*

Q. Was there any other reason for using the company's name ?

A. As a trade-mark, it was valuable to continue the introduction of the goods.

Q. Why was it valuable ?

A. As it was known, for instance if I start inks in  
10 my name "W. F. Squier," they would not sell.

Q. How long had the company been carrying on this business ?

A. I think the company was organized in January of 1876 or 1877.

Q. And had been carrying on its business from that time ?

A. Yes, sir.

Q. And the goods had attained a certain name in the market ?

20 A. Yes, sir.

Q. You say other parties were in negotiation with you, and that was one reason why you kept on in that name ?

A. Yes, sir.

Q. Why did you do it ?

A. I did it for my benefit, to see if I could get my money out of the factory, as the goods in the shape I found them were not valuable without the factory was carried on.

30 Q. I don't think you quite understand my question—you say some parties connected with the company who put money into it, were negotiating with you about purchasing it, and that is one reason why you used the company's name ; now, why did you do that in connection with their negotiations ; did they make any request about it ?

A. Oh, yes, sir ; I answered that question before.

40 Q. No ; you said they were negotiating with you. What did they request you about it ?

A. They requested me to keep the company's name up, so that when they bought me out the trade would be run right along, and no one would know that the Burnet Manufacturing Company was in trouble.

Q. What was the amount of your disbursements there in connection with the business after the sale and up to the time the Receiver took possession?

A. How much, what?

Q. How much did you disburse there in that business after the sale and up to the time the Receiver took possession, for the paying of workmen and buying of goods?

A. Oh, I should suppose three or four thousand dollars—I judge so.

Q. Did the company pay any part of that to you?

A. No, sir.

Q. Did you ever ask them to pay any part of it?

A. No, sir.

Q. Did you ever expect them to pay any part of it?

A. Did I expect the company to pay any part of it. No, sir.

Q. Was there ever any arrangement or agreement or talk between you and the company, or any member of the company that they were to pay any part of those expenses?

A. The only talk was that I told them, if they could raise the money to buy me out, they could have the property for what it cost me, as I was anxious to dispose of it.

Q. What control, if any, was exercised by that company, or any of its officers over the business and the property of the company after you bought it at the constables sale—do you understand me?

A. I don't know as I understand your question.

THE STENOGRAPHER read the question.

A. None whatever, only under my directions.

Q. Who exercised that control under your direction?

A. My directions were given to Mr. Parker.

Q. At the time you purchased the property there, what were the goods that were on hand; what did you buy rather?

A. Well, I bought all the goods that were in the place.

10 Q. Do you know anything about what goods were purchased by Mr. Burnet from the gentlemen that represented the former owners of the company; do you know what they were?

A. You mean about two years before?

Q. Yes?

A. Only from hearsay.

Q. The goods you bought at constable's sale, were any of them in hand of the company's possession at the time of the sale to Mr. Burnet by those gentlemen.

20 A. I understand there were very few goods and of very little value.

Q. You purchased at constable's sale certain goods?

A. Yes, sir.

Q. How long had those goods, that you bought from the company, been in the possession of the company at that time; you can tell that?

30 A. Well, I will have to date back; I have seen a bill of sale from A. P. Condit, Oscar L. Baldwin, Joseph L. Plume, and Joseph Hanson, to Mr. Burnet, dated in December, 1876, which shows that very near two years have elapsed.

Q. Go on and tell us what goods were on hand at the time you bought, that had been on hand for two years prior?

A. Those had disappeared; all there was in hand were the tools and fixtures; I presume they were in hand, and some worthless ink; all the good merchantable goods had been sold within the two years.

40 Q. Were you a dealer in the Mechanics Bank?

A. Yes, sir.

Q. Up to what time ?

A. From 15 or 20 to 25 years probably.

Q. Up to what time ?

A. About the 5th of October, 1879-1878.

Q. What were your relations with Oscar L. Baldwin ?

A. On the face they were very friendly.

Q. How often were you in the habit of being at the bank ?

10

A. Probably twice or three times a week.

Q. You went there generally to see Mr. Baldwin ?

A. Frequently ; he frequently called me round and talked with me.

Q. What were your offerings for discount ?

A. Well, I had a line there of probably \$20,000, and some times more.

(Objected to.)

By MR. WHITEHEAD : I want to show that Oscar L. Baldwin, who knew the witness was dealing with the H. C. Burnet Manufacturing Co., never told him they held the notes of that corporation, and were receiving them from time to time.

Q. Did you ever have any conversation with Mr. Baldwin about these affairs ?

(Objected to.)

Q. Was Mr. Baldwin the cashier of the Mechanics Bank ?

30

A. Yes, sir.

Q. He is still ?

A. Yes, sir.

By MR. J. WHITEHEAD : Now I want to prove a certain conversation between Mr. Baldwin, the cashier of this bank,—the man who gave the bill of sale to Mr. Burnet,—I want to prove the conversation, and what was said by Mr. Baldwin to Mr Squier.

40

BY THE COURT: You have not gone far enough for me to see whether the evidence would be competent or not. Proceed.

Q. Did you have a conversation with Mr. Baldwin about this matter?

A. I did, sir.

Q. When was that?

A. In the month of October of 1877.

10 Q. Prior to, or after your judgment?

A. Previous to my sale.

Q. A year before?

A. Yes, sir, and Mr. Baldwin— (Interrupted.)

Q. I don't care about that. But since the sale to you by the constable, have you had any conversation with Mr. Baldwin?

A. Yes, sir, and also wrote him a letter.

Q. When was that?

A. That was in the month of October, 1878.

20 Q. When did you first learn that the Mechanics Bank had some claim against the H. C. Burnet Mfg. Co.

A. I never learned that they had a claim until about the time of my sale.

Q. Until about the time of your sale?

A. Yes, sir; about the 1st of September.

Q. The sale was the 11th of September.

30 A. Yes, sir. I was then told that they held notes of the Burnet Manfg. Co., and that they were given and no value was ever given for them.

(Objected to.)

Q. Who told you that?

A. The Secretary of the company.

Q. Mr. Parker?

A. Yes, sir; and the president of the company told me also.

Q. Mr. Burnet?

A. Yes, sir.

40 (Objected to. Overruled.)

Q. Now go back to the conversation between you and Mr. Baldwin,—*that* you say was in September?

A. October, 1878.

Q. Now what was that conversation?

A. That conversation was this. I heard that Mr. Baldwin had said that I had sold the company out in a fraudulent way, and I then wrote Mr. Baldwin a letter, stating I did not wish him—(interrupted).

By MR. J. WHITEHEAD—to complainants' counsel: Have you that letter? 10

COMPLAINANTS' COUNSEL produced same, and handed it to Mr. J. Whitehead.

Q. (Showing same to witness.) Is that the letter?

A. Yes, sir.

Q. Now, you say you sent him a letter?

A. Yes, sir.

Q. And then you had this conversation?

A. Yes, sir.

Q. Now go on and tell us what the conversation 20 was?

A. Am I not to state what was in the letter?

Q. No; just the conversation?

A. I went in to see him after writing this letter, and told him he had not replied to my letter; and he said that he had understood that there had been some queer transaction and he was bound to probe it to the bottom and see what he could make out of it. I told him that he had a perfect right to do so, that my letter explained itself, but I did not wish 30 him to put it out to the public that I was a fraud, because I had lived a good many years and never done a fraudulent act that I knew of.

Q. Was that all the conversation?

A. We left on the best of terms apparently, and he said, "Well, he thought he should look into the matter," and of course you know the result.

Q. Then you had sent him the letter, as I understand you, and then you had this conversation?

A. Yes, sir. 40

Q. Was anything said in that conversation about the letter ?

A. Yes, sir.

Q. What was said about the letter ?

A. I merely referred to the letter and asked him if he was ready to return me those notes which he held and which had been paid, and he stated to me that he had not been able to find them yet.

10 By Mr. J. WHITEHEAD—I offer the letter in evidence; it is dated November 8, 1878.

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EXHIBIT B.

By the WITNESS: I have mistaken then the date of the conversation; it was in November instead of October.

By Mr. LILLY :

20 Q. Was not the same offer as is contained in this letter to Mr. Baldwin, made to him in the conversation subsequent to the letter ?

A. I told him I had come prepared to carry out my offer.

Mr. J. WHITEHEAD at this point read the letter, Exhibit B.

*Cross-examined* by Mr. CONDIT :

30 Q. Mr. Squier, how frequently were you at the office of the company prior to the time of this sale—during the year 1878 ?

A. Sometimes I was there once a week.

Q. Any oftener than that ?

A. During the summer months I was.

Q. What months were you there oftener ?

A. I was oftener there in the month of August than once a week.

Q. What was your business there ? what called you to the office of the company ?

A. I went there to sell them goods.

Q. Was that your only business there ?

A. In the month of August, no, sir, it was not; my family was out of town, and I was staying out of town, and I asked permission of the president and secretary if I could have my mail directed there, which they granted.

Q. Then you were in the habit of being there every day in the month of August ?

A. Very nearly every day—every day I was in 10 town.

Q. Did you see Mr. Parker always when you were there ?

A. Not always.

Q. As a rule ?

A. As a general rule he was there; yes, sir; I might state here probably that they furnished me a separate room for my use when I wanted it.

Q. Who furnished you that room ?

A. Mr. Parker. 20

Q. Did you pay any rent for it ?

A. No, sir.

Q. When was it you bought the Gouch judgment ?

A. I can't state exactly, but it was in the month of August.

Q. That you bought the Gouch judgment ?

A. Yes, sir.

Q. At whose request did you buy the Gouch judgment ?

A. At the request of Mr. Parker, who told me 30 that the company would be sold out, that they were perfectly good, but had not the money just at present to pay it, and the judgment was obtained when they supposed that they had a defence, and their defence was overruled.

Q. How soon after you purchased the Gouch judgment did you commence your suits ?

A. I can't say, only from the records.

Q. Can't you say within a month or within twenty days ? 40

A. It was within thirty days.

Q. When you commenced your suit did you think the company perfectly solvent ?

A. I was told they were.

Q. Did you think they were perfectly solvent ?

A. Well, I had my doubts.

Q. Did you enforce the Gouch judgment ?

A. I did not, sir.

Q. Why not ?

10 A. For the simple reason that I held that for fear that my other judgments would not be covered, and with this judgment I might attach some other things that they might have.

Q. Then your object in not selling under the Gouch judgment was because you thought you could not cover all the property of the company under the Gouch judgment ?

A. That was not the reason ; no, sir.

Q. Will you let me understand what your reason  
20 was then ?

A. I have just stated it.

(THE STENOGRAPHER was requested to read the answer the witness gave, and did so.)

Q. What do you mean by saying that the property would not be covered by these judgments ?

A. With the property that was in the factory—that there was not enough property probably in the factory to satisfy my judgment.

30 Q. And that was the reason you did not press the Gouch judgment ?

A. Yes, sir ; at that time.

Q. Did not you know that the company was insolvent ?

A. I did not, sir.

Q. Did you sell the company any goods after the 1st of August ?

A. After the first of August ?

Q. Yes ?

40 A. It is my impression I did.

Q. Did you sell the company any goods after you purchased the Gouch judgment?

A. I think not, and yet I won't be positive.

Q. Have you any memorandum or book whereby you can tell the times of sales made to the company about that time?

A. Have I? Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Cannot you refer to your book and see what 10 sales you made during the months of July and August to the company?

A. I can, sir.

Q. Won't you please refer to it, and if you have any memoranda, show them to us?

A. (Witness referred). Will you state what time the Gouch judgment was?

Q. Well, you give us the date of the sales to the company?

A. Your question was after the Gouch judgment. 20

Q. I simply asked you to give me dates of the sales during the months of July and August that you made to the company?

A. The sales in July amounted to \$198.70, with some money advanced.

Q. What time in July?

A. The sale was on the 12th of July and amounted to \$85.70.

Q. How much for cash advanced? 30

A. On the 15th \$113; and the 11th of July sales \$197.83, and on the 10th of July \$72.87.

Q. Will you give us the items of those different sales, if you have them there in your book?

A. I will, sir.—July 10th, \$72.87.

Q. What was it for?

A. One bag of gum.

Q. Is that all?

A. That's all in that.

Q. Anything else? 40

A. On the 11th it was 41 pounds of Garrett shellac, \$8.20; on the same day 2½ bags gum, and the amount was \$189.63.

Q. Same day?

A. Yes, sir.

Q. What next?

A. 12th July, one case of shellac, \$40.50.

Q. Anything more?

A. One bag of gum, \$45.20; on the 15th of July  
10 cash advanced \$113.

Q. When is the next entry?

A. The next is August 1st and 10th?

Q. Well?

A. Three cases of shellac; the amount is \$120.52.

Q. Anything more in that day?

A. No, sir.

Q. Well.

A. 17th and 24th cash advanced \$75.

Q. Of August, that is?

A. Yes, sir; \$25 one day, and \$50 the other day.  
20

Q. \$25 on the 17th, and \$50 on the 24th?

A. Yes, sir.

Q. Now, what is the next there?

A. August 27th, cash advanced \$167.71 and interest; cash and interest \$30.

Q. Same date?

A. Yes, sir.

Q. How were these goods sold to the company?

A. They were sold in lots at different times, on a  
30 credit of 30 days; each bill stood by itself.

Q. For what was this cash advanced?

A. Money loaned to the company.

Q. To whom did you give the money?

A. To the secretary of the company.

Q. Were all the items you have mentioned in  
your answers included in these suits?

A. They were, sir.

Q. Were there other items for goods sold, included in the suits, other than you have mentioned?  
40

A. Yes, sir; you only asked me for certain dates.

Q. Can you tell me from your book when these different goods were sold and delivered to the company, which are in this judgment?

A. Yes, sir.

Adjourned until Thursday, January 22, 1880, at 10 A. M.

10

IN CHANCERY OF NEW JERSEY.

Between—

THE MECHANICS' NATIONAL BANK  
OF NEWARK,  
Complainant,

*and*

THE H. C. BURNETT MF'G Co. and  
WILLIAM S. SQUIER,  
Defendant.

20

Before his HONOR, ABRAHAM V. VAN FLEET, Vice-Chancellor.

Messrs. WHITEHEAD & CONDIT for Complainants.

30

Mr. JOHN WHITEHEAD for the Corporation.

Mr. JOHN LILLY for WILLIAM S. SQUIER.

Transcript of short-hand report of testimony taken in the above cause upon the continuation thereof before the Vice-Chancellor, at his chambers, on Thursday, January 22d, 1880.

WILLIAM S. SQUIER recalled for further cross-examination.

40

By Mr. CONDIT :

Q. Will you state the items on your book that were unsettled at the time of the commencement of these suits, in addition to those you have already mentioned ?

A. A bill of April 10th, 1878.

Q. Well, what was it ?

A. \$182.26.

Q. What was it for ?

10	A. It was for three boxes of gum at 18c. a pound.....	\$232 20
	Credit by balance overpaid by notes previous.....	49 94
		\$182 26

Q. Are there any other items ?

A. No, sir.

Q. Allow me to look at your book ?

A. (Witness handed same to counsel.)

20 Q. What is this book ?

A. A book of entries.

Q. When were those last made ?

A. They were made April 10th, April 15th and June 21st.

Q. Explain how there came a credit there by balance for over payments by notes ; what is the meaning of that ?

A. That means that I had from the—I will explain it otherwise ; the company's account had not  
30 been closed for a very long time, and I had had notes from them, and I had had the notes discounted, which were for goods sold and for moneys that I had given them on their own notes, and at that time I was anxious for a settlement, and I balanced my books and found that they had overpaid me by crediting by interest, &c., \$49.94, and I so rendered the bill.

Q. Then the company were giving you notes for your accommodation ?

40 A. Occasionally ; yes, sir.

Q. How long had this accommodation continued ?

A. I do not know ; I guess, probably, a year.

Q. And to what extent had they had your notes for the year prior ?

A. To what extent ?

Q. Yes ?

A. For business and accommodation ?

Q. No, for accommodation ?

A. Well, I would accommodate them and they would accommodate me ; probably it would amount 10 to a thousand dollars or more.

Q. Who gave you these notes ?

A. They were given to me by the president of the company.

Q. By anybody else ?

A. No, sir, no one else was authorized to sign their name ; I do not know whether he had.

Q. Did you get these notes through Mr. Parker in any way ; did he give them to you ; was the negotiation through Mr. Parker or through Mr. Bur- 20 nett ?

A. As a general thing through Mr. Burnett.

Q. Did you at any time get them from Mr. Parker ?

A. Mr. Parker might have handed me notes if Mr. Burnett had handed them out to him ; I cannot say but what he did.

Q. Through whom was the negotiation carried on ?

A. The arrangement was made through Mr. Bur- 30 nett.

Q. Have you the assignment ; was the Gouch judgment regularly assigned to you ?

A. I think it was, sir.

Q. Have you the assignment ?

(Mr. John Whitehead handed the same to Mr. Condit.)

Q. (Handing the same to witness.) Is that the assignment of the Gouch judgment !

A. Yes, that appears to be it.

Q. Was that assigned to you on the day it is dated ?

A. I suppose it speaks for itself, does it not ?

A. What is the date of it ?

By Mr. LILLY : I object to that question ; the paper speaks for itself—the 24th of August, 1878.

10 Q. What was the credit on your book April 10th for interest on notes of the company that had been given to you for your accommodation ; can you tell from your books ?

A. I'd like to hear the question again.

Q. What did you owe the company on the 10th day of April for accommodation—interest on accommodation ?

A. I answered that previously ; \$49.94.

Q. Does your book show that ?

A. Yes, sir.

20 Q. After that time did you have any other of the company's paper for your accommodation ?

A. Yes, sir.

Q. After the 10th of April ?

A. Yes, sir.

Q. Down to what time ?

A. Down to June.

Q. No later than that ?

A. I think not, sir ?

30 Q. On the 15th of July you said you paid the company cash \$113. To whom did you pay it ?

A. I handed it to the president.

Q. For what purpose ?

A. As a loan ?

Q. To him or the company ?

A. To the company.

Q. Did he tell you for what purpose he wanted it ?

A. He said he was short, I believe.

Q. August 10th it appears you advanced \$75. What was that for ? To whom did you pay it ?

40 A. Does it so appear ?

By Mr. WHITEHEAD: No, it does not so appear: it was the 17th and 24th.

By Mr. CONDIT: I am taking it from his answer.

By the WITNESS: You are taking the answer wrong.

By Mr. CONDIT: Perhaps so.

Q. On the 10th of August you did not pay anything in cash to the company? 10

A. No, sir.

Q. When after that did you advance anything in cash for the company?

A. On the 17th and 24th.

Q. What was that advance on the 17th for, and how much?

A. \$25.00.

Q. And on the 27th did you advance anything?

A. I did.

Q. How much? 20

A. \$167.71.

Q. What was that for?

A. That was to help the company.

Q. To whom did you pay it?

A. I paid it to the secretary.

Q. To whom did you make the payments on the 17th and 24th of August?

A. I think the secretary came to me saying that the company was short, and asking me for a loan for a few days. 30

Q. Have you any charge on your books on the 27th of August for interest?

A. I have, sir.

Q. What was that for?

By Mr. LILLY: If your Honor please I do not like to object to the testimony as it is taken, but I think it ought to be. The matter has all been gone over. Counsel asked him to take his books and give the items, and he did so yesterday. Now do we want 40

to go over this whole thing again and again, and again ?

By the COURT : The whole of this examination is for the purpose of showing the relation between the witness and the corporation.

By Mr. LILLY : I think he done that yesterday.

10 By the COURT : It is entirely proper ; proceed, gentlemen.

Q. Please state what the item of interest is for on the 27th of August ?

A. That is for interest on the accounts.

Q. On what accounts ?

A. On accounts that they owed me. These goods of orders were sold on thirty days', you understand, and after that, of course, it drew interest, and part of that was money, and there was some ten or fifteen  
20 dollars in money, and the balance was for interest which the company owed me.

Q. Then it was not all interest ?

A. It was cash and interest.

By JOHN WHITEHEAD : What says so ?

By the COURT : The entry of the 27th August.

Q. Then part of that was for money loaned and part for interest ?

A. Yes, sir.

30 Q. These goods that were charged then are the 10th, 11th and 12th ; how were they delivered ; on the days on which they were ordered, were they all delivered together ?

A. They may have gone to the factory not on the days they were charged, but those were the days when they were sold.

Q. Who gave you the orders ?

A. The orders for what ?

Q. For the goods.

40 A. Who ordered the goods ?

Q. Yes.

A. I always sold the goods to Mr. Burnett, as he was the president of the company, and sometimes I had a talk with Mr. Parker, the secretary ; but the goods were closed with Mr. Burnett.

Q. Did you ever sell to the company on any other terms than 30 days?

A. Never.

Q. Did you have any note for any portion of those goods—did you ever take a note for a portion of the 10 goods included in those items ?

A. No, sir.

Q. There appears to have been a note given to you on the 3d day of June, payable to your order, for \$256.81 ; did you have such a note ?

A. I did, sir.

Q. When did that note come due ?

A. The book speaks for itself.

Q. Won't you, please, say ?

A. I will calculate it for you if you wish. 20

Q. It is indicated there on the book, is not it ?

A. Yes, sir.

Q. Well, what is it ?

A. According to the book, it came due on the 10th day of September.

Q. What was that note for ?

A. Accommodation to me.

Q. The time that note was given to you, did the company owe you anything ?

A. I think they did, sir. 30

Q. Was that note included in the account that you made up against the company at the time these suits were brought ; was that note taken into consideration in any possible way, at the time these claims were made out upon which these suits were brought ?

A. It was not, for the simple reason that the note was an accommodation note, with the understanding that I was to take it up when it was due, and I

took it up when it was due ; I carried out my part of the contract.

Q. Why didn't you credit it on your claims against the company ?

A. The note was not given to be credited ; it stands on its own basis.

Q. Then you mean to say that although you expected to take up that note, that if you didn't recover this claim against the company for the full amount of this judgment, you still expected to take up this note ?

A. I always carry out my agreements ; I have never failed yet.

Q. Your agreement was that you would pay that, whether the company owed you or not at the time?

A. Yes, sir.

Q. Has that been your practice before ?

A. It is, sir.

Q. I notice this state of demand in one of these judgments—in whose handwriting is that bill in the statement of demand ?

A. That bill is in my handwriting, sir.

Q. The state of demand also ?

A. Yes, sir.

Q. Are they all of them the same way ?

A. I can tell if I look at them.

Q. (Handing witness another one.) How is that ?

A. That is mine.

Q. They are all in your handwriting ; you drew them all, did you ?

A. Yes, sir.

Q. The bills are all in your handwriting ?

A. Yes, sir ; I presume they all are, but I would not like to swear to that without seeing them.

Q. Why did you split up that claim into these suits, Mr. Squier ; what was your object in doing that ?

A. I don't understand ; I don't know as I understand the words " split up."

Q. Why did you bring six separate suits for your claim against the company instead of one?

A. I suppose I will answer the question by saying that of course I wanted to get my bills into judgment as soon as possible, and as I had a perfect right to bring them to Court if they were under \$200, I did so.

Q. Why did you want to get the judgment as speedily as possible; what was your object?

A. I believe anyone suing another party always takes speed. 10

By the COURT:

Q. Counsel does not care what other people do; he wants to know what you did, or what was the reason of your being desirous of getting your judgment as speedily as possible?

A. To get my money.

*Further cross:*

20

Q. Is that all?

A. That is all.

Q. Were you not afraid that if you brought suit in a higher Court you would not get your money?

A. I did not think anything about it.

Q. That didn't occur to you at all?

A. No, sir.

Q. Did you, at the time you brought these suits, consider the company was solvent and able to pay all its debts. 30

A. I was told they were.

Q. I ask whether in your judgment you thought at that time the company was solvent and able to pay its debts?

A. I knew from what I had heard, and I knew nothing further.

A. Is that the only answer you can give me?

By the COURT: Just read the question, Mr. Stenographer. 40

Stenographer read as follows: "I ask whether in your judgment you thought at that time the company was solvent and able to pay its debts?"

A. I do not see how I can answer the question any more plain.

Q. We would like to have the most explicit answer you can give to the question.

10 By the COURT: The counsel wants to know what was your judgment at that time as to whether the company was solvent or insolvent—able to pay its debts or not. If you did not have any opinion or belief upon that subject, say so; but if you did, tell us what it was.

By the WITNESS: I had no opinion on the subject except what I gathered, and that was  
20 that the company was solvent.

*Further Cross:*

Q. Was solvent?

A. Yes, sir.

Q. At what time, when you commenced these suits did you know of the indebtedness of the Mechanics Bank?

A. I did not know it at the time I knew it about the time, soon after; about the time or soon after.

30 Q. Did you think the company was able to pay all its debts including its indebtedness to the Mechanics Bank?

A. I never thought it owed the Mechanics Bank.

Q. Well then including the claim of the Mechanics, whether it owed or did not?

A. I had no opinion on that subject.

Q. Didn't you know whether the company was able to pay its debts including that claim or not. Had you any opinion about it, one way or the

40 other?

A. (No answer.)

Q. Who were present, Mr. Squier, at that sale?

A. Well, the constable was present, and there was a man named Smith, and a man named Sherwood, and a man named Parker.

Q. The secretary.

A. Yes, sir, and there were some other people whose names I did not know; I did not notice them.

Q. Who is Sherwood?

10

A. He was a man that was carrying on the provision business.

Q. In the market?

A. Yes, sir.

Q. Were you living with him at that time?

A. I was boarding with him at that time.

Q. Did you know he was to be there?

A. He said he would be there.

Q. Did you ask him to be there?

A. I asked him if he would not be there.

20

Q. What purpose did you have in asking him to be there?

A. Well, he wanted to go into the business.

Q. But he was in the provision business at that time?

A. Yes, sir, but he was going out of it, and was desirous of going into another business, and I had no desire of carrying on this business.

Q. Do you mean to say that Mr. Sherwood came for the purpose of buying that property and carrying on that business?

30

A. That is what I understood him, sir.

Q. Did he bid at the sale?

A. He did.

Q. What bid did he make?

A. He made several bids.

Q. At what was the property started—\$900.00?

A. Yes, sir.

Q. Who started it at that?

A. I won't be certain whether he started at

40

\$900.00 or not. I do not think I started it at that price.

Q. When did you first bid? At what point of the bidding did you first go in, and what was your first bid?

A. Well, I should think about \$975.00.

Q. Who ran it up on you?

A. The others ran it up.

Q. Who?

10 A. There were several parties bidding.

Q. Well, what parties?

A. The parties I have mentioned.

Q. Did Smith or Sherwood run it up?

A. Yes, sir.

Q. Do you know of any others.

A. The others I did not know.

Q. Did you know any other bidders except Smith and Sherwood and yourself?

A. I do not remember.

20 Q. Who was Smith?

A. He was a man I did not know.

Q. Did you not know that the company rented their office of him in New York?

A. I understood so.

Q. Were you not introduced to him that day of the sale.

A. It was after the sale.

Q. Did the company owe him a debt?

A. It is my impression they did.

30 Q. How much?

A. That I cannot recall.

Q. Has the debt been paid since you got the property?

A. I understood Mr. Parker to say he had paid the debt.

Q. Since you got possession?

A. Yes, sir.

Q. You do not know the amount?

A. No, sir.

40 Q. Have you any idea what the amount was?

A. Well, I beg to alter my answer ; I do not know whether it was for the rent of the office of the company or not ; it is my impression, it was not.

Q. Well, the debt was paid, whatever it was ?

A. I think so ; yes, sir.

Q. And after you took possession of the premises ?

A. Yes, sir.

Q. This property was sold altogether then ?

A. It was sold altogether ; yes, sir. 10

Q. Where were those goods in the building ?

A. They were scattered all over the building.

Q. Some in the cellar ?

A. Yes, sir.

Q. Some on the first floor ?

A. Yes, sir.

Q. Some on the second floor ?

A. Yes, sir.

Q. How many rooms are there on the first floor ?

A. The first floor there is five ? 20

Q. The second floor ?

A. The second floor there are four.

Q. The third floor ?

A. That is above the roof.

Q. Then there were two floors and a basement—a cellar ?

A. There were two floors and a basement.

Q. And a cellar underneath ?

A. Yes, sir.

Q. Were there any goods in the cellar ? 30

A. Yes, sir.

Q. And goods in all of the rooms ?

A. Yes, sir.

Q. Were there any goods packed up in boxes ?

A. Yes, sir.

Q. Were the boxes open ?

A. Some of them were.

Q. Were they all open ?

A. Well, I didn't examine them.

Q. You didn't examine to see whether the boxes were open or not, or what there were in the boxes ?

A. Oh, no ; you could not do that on the day of the sale, you know.

Q. What part of the building did the sale actually take place in ; where were the company assembled ?

A. The company were assembled in the —about the middle room, I suppose you would call it.

Q. What floor ?

10 A. The first floor.

Q. Did the company go up into the second floor ?

A. Excuse me, what company ?

Q. The company that were assembled there ?

A. I will describe it if you wish ?

Q. Did the company go up-stairs ?

A. The company went all through the building before the sale commenced and examined the goods and materials.

Q. How long a time were they at it ?

20 A. I should think half an hour or an hour.

Q. Who went up ? Did you go through and examine everything ?

A. Yes, sir.

Q. Who else went through ?

A. The whole company went through.

Q. You just marched through the rooms, up-stairs and down ?

A. We walked through and examined the goods.

30 Q. What manufactured goods were exposed and examined ?

A. Inks and mucilage, &c., and sealing-wax.

Q. What proportion—you say there were boxes there not opened at all—what proportion were opened and examined ?

By Mr. JOHN WHITEHEAD : Has he said that ?

By Mr. CONDIT : Yes, sir.

By THE COURT : He said some of the goods were examined.

40 Q. To what extent were there manufactured goods in the boxes—were there any in ?

A. Yes, sir; with the understanding that those others contained just the same as those that were opened; the boxes were marked with what they contained.

Q. Who were the parties interested in the company who were negotiating about the purchase of this plant—that is the property of the company?

A. There were Mr. Townsend of New York and a man from Auburn.

Q. What was his name? 10

A. His name escapes my memory just at present.

Q. What was Mr. Townsend's first name?

A. J. N., I think.

Q. When did you first hear that Mr. Townsend had an idea of purchasing this property?

A. Less than a week after the sale.

Q. Less than a week?

A. Yes, sir.

Q. When did you first hear that anybody had an idea of purchasing the property to carry on the business—anybody interested in the company; I am not referring particularly to Mr. Townsend, but anybody interested in the company? 20

A. About that time.

Q. About a week after the sale?

A. Yes, sir; I don't think it was less than a week.

Q. You had heard nothing about it before?

A. No, sir.

Q. Where did you go after the sale? 30

A. I think I went to bed sometime afterwards.

Q. Immediately after the sale where did you go?

A. I didn't go anywheres that I remember of; I presume I staid in the factory.

Q. Didn't you go up and have any entertainment with anybody?

A. No champagne.

Q. Or any of the parties go up with you?

A. I am not in the habit of taking people out and I did not at that time.

Q. That is all I want to know ; you said you had an interview with somebody that night, who was it ?

A. I said that.

Q. You said that night you had a conversation with somebody on the night of the sale ?

A. I do not remember ever having said so.

10 Q. Did you have any conversation with anybody after the sale that night ? With anybody connected with the company in reference to the sale or the property of the company ?

A. I do not remember that I did that night.

Q. Then nothing was said by you to Mr. Parker, or anybody else connected with the company in reference to your purchase of the property of the company or the business of the company that day ?

20 A. That is not the question you asked me before.

Q. Well, I ask that question now ?

A. Of course as I had bought the property I had no doubt left some instructions about my property as I left Mr. Parker in charge as he was living there.

Q. What instructions did you give Mr. Parker about it ?

30 A. Nothing material, only in connection with my own business.

Q. What instructions did you give Mr. Parker; that is a question for us, whether it was material or not ?

By the COURT: Answer the question, Mr. Squier, it is a proper question.

A. I told him that I should carry on the business and I wanted him to remain in his room as usual and I would give him further directions.

Q. Did you expect at the time of the sale that

the men who had left would be there in the morning to go on with the business on the following morning?

A. I told Mr. Parker that the men were to go to work and finish up the goods.

Q. When did you tell him that?

A. It is my impression I told him that night.

Q. Did you expect at the time of the sale or after the sale that the men would be there in the morning to go to work and continue the business? 10

A. I expected, of course, that the men would be around.

Q. Did you see any of the men on the day of the sale?

A. Oh, yes, sir.

Q. Did you have any conversation with them?

A. I presume I did.

Q. Well, what did you say to them in reference to the business?

A. I don't remember. 20

Q. Did you say anything to them with reference to being there in the morning and going on with the business?

A. No, sir, not that I remember of.

Q. Well, you came there on the morning of the 12th, didn't you?

A. I may have done so, I don't remember —, oh! the 12th?

Q. Yes?

A. Yes, sir; of course. 30

Q. Were the men then at work?

A. Yes, sir.

Q. Was Mr. Parker there?

A. When I first got there do you mean?

Q. Yes?

A. It is my impression he was not there when I first got there; he was out.

Q. Who was there?

A. Well, Beach was there.

Q. Was the business running on as usual? 40

A. It was ; yes, sir.

Q. In accordance with your instructions ?

A. Yes, sir.

Q. When were they given ?

A. The night before.

Q. How late in the evening ?

A. Well, I always dine at 6 o'clock ; it could not have been later, I think, than that.

Q. No later than 6 o'clock ; now were those the  
10 instructions you gave to Parker ?

A. I so stated.

Q. That night ?

A. Yes, sir.

Q. Where was it that you gave him those in-  
structions ?

A. In the building.

Q. In the factory ?

A. Yes, sir.

Q. Immediately after the sale ?

20 A. Soon after.

Q. That you wanted the men then in the morning  
to go right on as usual ?

A. Yes, sir.

Q. What was the arrangement made about the  
use of the trade-mark and the transferring of the  
accounts ; when were the accounts actually trans-  
ferred—the bills receivable and the books of account  
of the company transferrrd to you ?

30 A. There was some transferred to me within a few  
days ; as soon as I commenced to loan money on  
them.

Q. Were all the accounts and bills receivable  
transferred to you ?

A. I think not all of them.

Q. To what extent were they assigned to you ?

A. Less than \$2,000.

Q. Do you know of any open accounts that were  
considered good on the books of the company that  
were not assigned to you ?

40 A. Do I know ?

- Q. Yes?
- A. I never examined.
- Q. Do you know of any?
- A. I do not know, I never examined.
- Q. Book accounts and bills receivable to the extent of \$2,000 were assigned to you?
- A. Not to that extent.
- Q. Well, to what extent?
- A. Something less than \$2,000.
- Q. How much less? 10
- A. That I cannot state from memory.
- Q. About how much less?
- A. Well, I should think \$500 less, probably not so much.
- Q. Was there any written assignment of these accounts?
- A. Yes, sir.
- Q. Have you it?
- A. I have it, yes, sir.
- Q. Where is it? 20
- A. It is around the court room here, somewhere.
- Q. Will you produce it?
- A. (Witness did so.)
- Q. (Handing witness three papers.) Are these assignments of the book accounts to you?
- A. Those are them.
- Q. Are they all the assignments that you had from the company on the book accounts?
- A. I think so.
- Q. Well, do you know? 30
- A. That is my impression.
- Q. Were there any bills receivable outside of these accounts that were transferred to you?
- A. Not if they were actually given to me.
- Q. That was not my question; were there any bills receivable outside of those assignments for goods sold by the company prior to the 11th of September, handed by Mr. Parker or anybody else connected with the company to you?
- A. Well, for what purpose? 40

Q. For any purpose ?

A. I am not positive whether there were any other assignments.

Q. Were any bills receivable or drafts or acceptances or anything else handed over to you for goods sold by the company or any indebtedness to the company prior to the 11th of September, except what was contained in these assignments ?

A. I will have to examine.

10 Q. Don't you know ?

A. I do not.

Q. Don't you know ?

A. I do not.

Q. Look at these assignments, will you please ; one is dated Sept. 18th, 1878 ; one is dated Sept. 30th, 1878 ; and one Nov. 1st, 1878 ; now look at this one dated 18th of Sept., 1878 ; what date was it executed ?

A. On the day it bears date, I presume.

20 Q. Whose handwriting is it ?

A. In mine.

Q. Is there any difference in the color of the ink that is used in putting in the date to the consideration ?

A. There is a difference in the color of the ink.

Q. How do you account for it ?

A. Because the assignment was made at one time and the acknowledgment at another.

Q. Where was it signed ?

30 A. I think Mr. Parker signed the assignment at the office.

Q. Who was there at the time ?

A. There was no one at the time, I think.

Q. Who is Harvey Sherwood ?

A. He is the man I am boarding with.

Q. When did he put his name there as a witness ?

A. On the 18th day of September.

Q. At his house ?

A. Yes, sir.

Q. The assignment was executed at the office, and Mr. Sherwood— (interrupted.)

A. Mr. Parker was present at my house.

Q. I thought you told me it was executed at the office?

A. Well, I do not understand your legal terms; I say he signed at the office and came to my house and had it executed.

Q. And that was the 18th of September?

A. Yes, sir; I always have two kinds of ink in 10 my inkstand.

Q. How is it about that date (handing witness second assignment), was that executed on the day it bears date, September 30th?

A. Yes, sir; it says so.

Q. Do you know, independent of what it says there, whether it was executed on that day, or any other day; have you any recollection about it other than you know from the date in the paper itself, what time it was executed?

A. I remember the time it was executed; yes, sir; 20 I remember that it was at that time.

Q. On the 30th?

A. Yes, sir.

Q. Is that the same colored ink in the date as the other ink in the body of the instrument?

A. I think it is.

Q. Well, look, what do you think about it?

A. I should say it was.

Q. And the figure one up there, is that the same 30 as the rest of the ink?

A. That is the same as the ink below.

Q. The same as the body of the assignment?

A. No, sir.

Q. Well, where was the instrument written—it is all in your handwriting?

A. Yes, sir.

Q. Where was it written and where was it executed?

A. It was written at the office and executed at my house.

Q. It was witnessed by Harvey Sherwood—he is the man that was at the sale ?

A. Yes, sir.

Q. On the first of November there seems to be an assignment of some accounts executed ; what are the accounts that are passed by that assignment or purport to be passed by that assignment to you ?

A. Those are accounts that remain standing on the books.

10 Q. It says Nov. 1st, that is long after you had taken possession, was it not ?

A. Yes, sir.

Q. Well, there is Oct. 1st, 1878, and so on down ; why do you hold an assignment of the company of these accounts ?

A. That was the mode that I carried on the business.

Q. That is all ?

A. Yes, sir.

20 Q. The mode you carried on the business ?

A. Yes, sir.

Q. Well, did you think that the company owned those accounts at the time of that assignment ?

A. Did I think the company owned them ?

Q. Yes, sir ?

A. No, sir ; they held them in a certain way.

Q. Why did you want an assignment of the accounts that already belonged to you ?

30 A. Because I wanted to guard against any trouble and anything— (interrupted.)

Q. You were throwing an anchor out in getting them ; you thought there might be trouble and that you would make yourself secure ?

A. You never can tell when anybody is going to get into trouble in these days.

Q. Yes, they are very troublous times ; that is your answer, then ; you wanted to guard against possible difficulty that might arise growing out of your transactions with the company ?

40 A. That is about the interpretation of it.

Q. You say the company owned this account in a certain way ; what do you mean by that?

A. Why, I was carrying on the business, and the business was being carried on in the name of the Burnett Manufacturing Company, so as to preserve the trademark, and to protect myself from bother in any shape at all ; I considered that that was the best way to carry it on.

Q. And then from time to time to take and transfer all of the accounts and all the indebtedness 10 through Mr. Parker to you ; was that your idea ?

A. If you will repeat that, please.

Q. You were going to carry on the business in the name of the company, and then as the indebtedness accrued from time to time you would take an assignment from the company to you of whatever might be due on account of the business ?

A. On account of me.

(The stenographer was directed to read the 20 question, and did so.)

A. I do not know that I understand the question.

(The stenographer again read the question.)

A. I don't understand what the word means—"through Mr. Parker."

Q. Well, from the company, through any agent of the company—I don't care whether it was through Mr. Parker or not. 30

A. That is the way I was carrying it on.

Q. That was your only object in getting assignments of these accounts ?

A. To carry it on in the company's name and so as to preserve the trademark, as I expected I might sell the business out.

Q. Did you ever bring any suit for any of these bills that were accrued subsequent to the 11th of September ?

A. I never had any occasion to. 40

Q. Did a man by the name of Meyer, living in New Orleans, owe the company anything at the time of this sale to you ?

A. Of this sale ?

Q. Of this sale on the 11th of September ?

A. No, sir ; I think not ; I have never seen anything on the books of the company of it.

10 Q. Did you ever draw or sign an acceptance or draft upon Meyer, in New Orleans, of 200 and some odd dollars, for the goods that were sold by the company prior to the 11th of September ?

A. No, sir.

Q. Did you receive, or your agents receive, from a man by the name of Meyer, or a man of some similar name, a sum of between two and three hundred dollars, or any sum for goods sold prior to the 11th of September, by the company ?

A. No, sir ; Meyer or any other name.

20 Q. Will you state whether there was an acceptance drawn upon a man in New Orleans, or upon a bank in New Orleans, for a debt to the company amounting to between two or three hundred dollars, or any other sum, after the sale of the company, prior to the 11th of September ?

A. There was nothing that I am aware of ; I never saw any such draft.

Q. You never signed any such draft ?

A. No, sir.

Q. Or any paper ?

30 A. Nor any paper prior to the 1st of September.

Q. Well, after the 1st of September ?

A. But you asked me prior ; I beg your pardon.

Q. I mean for goods sold before the 1st of September, but collected afterwards ?

A. No, sir ; I never saw any such thing ; there was no account on the books, to my recollection of it.

Q. Due for goods sold subsequently to the 11th of September, then ?

40 A. For goods sold in December ?

Q. Yes ?

A. Yes, sir.

Q. You did ?

A. Did what ?

Q. You drew on Mr. Meyer, in New Orleans ?

A. I did not.

Q. What did you do ?

A. The company, or that is J. H. Parker, as the secretary, drew a draft for goods that I sold Mr. Meyer.

10

Q. For goods sold in December ?

A. Yes, sir.

Q. When was that draft paid ?

A. That draft was paid—I actually do not know.

Q. Was it paid after a receiver was appointed ?

A. Oh ! it must have been.

Q. Was it accepted by Meyer after a receiver was appointed ?

A. It was not in my hands when the receiver took charge of the affairs of mine and the company.

20

Q. Had it been in your hands before ?

A. It had.

Q. What became of it ?

A. It was cashed by a party in New York.

Q. You got the benefit of it ?

A. Of course I did.

P. What was the amount of it ?

A. \$201.75.

Q. This draft was drawn by whom ?

A. It was drawn by J. H. Parker, as Secretary.

30

Q. Secretary of what ?

A. That is all it said—oh ! the H. C. Burnet Manufacturing Company, I presume, was over it.

Q. It was not drawn as a draft in your business ?

A. It was not drawn to my order.

Q. Did it purport to be a draft by the company ?

A. It purported to be a draft, as I stated.

Q. Did Mr. Parker still hold himself out as secretary of the company ?

A. He was secretary of the company.

40

Q. But in transacting this business after the 11th of September, did Mr. Parker hold himself out as secretary of the company ?

A. He was secretary of the company until it died, I believe.

BY THE COURT: Q. The question is, whether in transacting your business Mr. Parker held himself out to the public as the secretary of the corporation ?

A. (Witness pauses.)

10 Q. In transacting your business after the 11th of September, did Mr. Parker hold himself out to the world as the secretary of the H. C. Burnet Manufacturing Company ?

A. I presume he did ; he was still the secretary.

*Further Cross-Examination :*

Q. Was that draft drawn by your authority and direction, Mr. Squier, to Mr. Meyer ?

20 A. Of course.

Q. That is all.

*Re-Direct Examination, by MR. LILLY :*

Q. In speaking of these accounts here, if I understand you correct, that from the 11th of September up to the 1st of October the business was carried on in the name of the company, but for your benefit ; that is how I understand your testimony ?

A. Yes, sir.

30 Q. The accounts from the 11th of September to the 1st of November belonged to you individually, did they not ?

A. Yes, sir.

Q. It was only done, then, if I understand you aright, to keep up the name of the company before the world ?

A. I have stated that before, as to the trade mark.

40 Q. Now, then, is it necessary in such a business as that to keep carrying on the business right along for the benefit of the corporation, or for the benefit

of the trade? Is it necessary to keep carrying on the business right along.

A. It is, as I stated before, and I got permission from the secretary of the company—who was the only officer of the company at that time—to carry on the business in the name of The H. C. Burnet Manufacturing Company for my benefit, and for the benefit that they might derive if they could get their debts settled up, and then could pay and buy me out, and for that reason as I was not anxious to carry the business on I was anxious to sell it out, and a gentleman who had a great deal of money in the company, whom I felt sorry to see lose his money, desired me also to continue it until he could raise money enough to buy me out, and that he was going to continue the business as previously.

Q. Were there any prospects, so far as you know, that that arrangement would be carried out?

A. I had every reason to believe that such was the case.

Q. Do I understand you to say that from the time you took possession of that property until the first of November you put into that business between three and four thousand dollars?

A. Between which?

Q. Between the 11th of September and the 8th of November, whether you put into that business between three and four thousand dollars?

A. I put in I think as much as that.

Q. Now then, Mr. Squier, at the time that the sale took place in September take the amount of goods in the factory at the time in September when the sale by the constable took place, and take the goods that were sold by the receiver in this case under the order of this court, which amount was greater, the amount sold by the receiver or the amount sold at the constable's sale?

A. There was much more sold by the receiver.

Q. Than at the constable's sale?

A. Yes, sir.

Q. So that at the time the constable sold, the goods were less ?

By THE COURT : Don't repeat, he has said so.

Q. And do you know what that sale amounted to by the receiver ?

A. I never learned.

10

By Mr. LILLY : I understood the receiver to say it was between fourteen and fifteen hundred dollars.

By THE COURT : The receiver has testified on that point.

Q. What did you consider the value, if anything, of the tools and fixtures of that company at the time of the constable's sale ?

20

A. Well, to carry the business on it was worth more—much more than if you were not going to carry it on.

Q. Were those fixtures afterwards sold by the receiver ?

A. Yes, sir.

Q. Do you know how much they brought ?

A. It was between four and five hundred dollars.

Q. Are the accounts as stated in the answer a true copy from your books ?

30

A. Yes ; my impression is they were taken from the books at the time.

By Mr. JOHN WHITEHEAD :

Q. Mr. Squier, for the accounts that were sold you by this transfer which accrued, or were created rather, subsequently to the sale in your business, what did you pay to Mr. Parker or the company for the transfer ?

40

A. I paid them nothing.

Q. Why did you pay them nothing?

A. Why did I pay them nothing?

Q. Yes?

A. Because the goods belonged to me.

Q. What was the reason of your taking the transfer?

A. For fear that there might be some trouble in connection with the company in some shape.

Q. How did you anticipate any trouble?

A. Well, I did not anticipate it, I only did it as a 10 precaution in case things might turn up that I was not aware of at the time.

Q. Then the transfer that was made to you of accounts that were actually due the company—what was the consideration of those?

A. Money I had loaned on them.

Q. How much money did you loan the company?

A. I loaned the company—I think it was some fourteen or fifteen hundred dollars.

Q. And when did you advance that money to the 20 company?

A. At different times.

Q. Upon what arrangement was it advanced at the time you advanced it?

A. Under that arrangement that as they wanted money they were to call on me for it, and I took the assignment of the book accounts with that understanding.

Q. And you actually loaned them fourteen to fifteen hundred dollars? 30

A. Yes, sir.

By the COURT: Q. Let me understand there; I don't know whether I fully understand, Mr. Squier, or not these assignment of accounts that actually belonged to the corporation and not to you, were made with the understanding that after the assignments were made you were to advance money to the corporation as they needed it?

A. Yes, sir; to pay their debts.

Q. You did not advance the whole amount at the 40

time the assignment was delivered to you, but you did subsequently as they called on you?

A. Yes, sir.

*Further direct examination:*

By Mr. JOHN WHITEHEAD: Q. How long after the assignments were made did you make the advances to them on account?

A. I should think for a month or two.

10 Q. And did you pay anything at the time that the transfers were actually made—did you advance anything to the company?

A. Yes, sir.

Q. Do you remember how much?

A. I could not say.

Q. Well, about?

A. Well, I should think three or four hundred dollars probably?

20 Q. Did you take measures to collect those accounts after they were transferred to you which belonged to the company?

A. The company collected them, I turned them over to the company.

Q. The company collected them and turned them over to you?

A. Yes, sir; I trusted them to that extent of course.

Q. Mr. Parker was managing for the company?

A. Yes, sir.

30 Q. And he was in your employment?

A. Yes, sir.

Q. How much did you receive actually on those accounts?

A. I think I am somewhere near, some \$800 short.

Q. Did you ever take any measures yourself to collect the accounts?

A. No, sir; I was stopped.

40 Q. Stopped by what—oh! by the injunction,—did the company have an agent in New York?

A. They did have ; yes, sir.

Q. Do you know any reason why these proceeds of these accounts did not reach you ?

A. Why, the agent of the company in New York, appropriated them to his own use.

Q. Collected some and appropriated it to his own use ?

A. Yes, sir.

Q. Do you know the amount ?

A. I think it was altogether, the company's and 10 mine, something like a thousand dollars or so.

Q. The company's accounts and yours ?

A. Yes, sir.

Q. Have you any memorandum, anywhere, in any of your books, which shows anything about this \$256,00 note—the accommodation note ?

A. Yes, sir.

Q. Where is that ?

A. It also speaks of the others.

Q. Where is it ?

20

A. (Witness referred to it) On the margin here of page 139, "note H. C. Burnet Manuf'g Co., June 7th, 3 months \$256.81, accommodation, W. S. S., paid by him September 10th, 1878."

Q. Did you pay it out of your own funds ?

A. I did sir.

Q. Did you ever make any demand on the company for it ?

A. No, sir ; for the simple reason that I had no right to.

30

Q. You were friendly with the company, I understand ?

A. I had always been friendly with the president—we have been friends for years.

Q. Mr. Burnet ?

A. Yes, sir.

Q. You loaned money to them just before you commenced these suits ?

A. Yes, sir.

Q. How did you come to do that ?

40

A. For the simple reason that I would loan any of my customers money when they were short and I think it is safe for me to do so; it is a habit I have got into, and probably it is a bad habit, but I have loaned a great many thousand dollars to people in trouble.

Q. What was the reason you loaned to the company this money?

A. They wanted to pay their debts—they told me they had money coming in, but it was not coming in at that time.

Q. Some question has been raised here, Mr. Squier about the account of yours July 12th—did you sell to the company any goods except what appears upon your books which have been offered here in evidence?

A. No, sir.

Q. Mr. Beach speaks of an account here of July 12th, of some goods sent to the factory,—do you know anything about that?

A. I don't know of any goods going on that date; I was in the habit of sending goods to the factory to be kept for me; my office being in New York; but I had the privilege from the company to send and store my goods there that I chose to, and often in buying a lot of goods, where I thought it was a good purchase and that the company might want them at sometime, I would send them there and if they didn't want them, I would take them away, and when they did want them and bought them I billed them to them.

Q. On the 12th of July no more goods were sold to the company than what appears upon your books?

A. No, sir.

Q. Mr. Squier, who directed at this constable's sale how this property should be sold?

A. I heard no direction at all.

Q. Did you give any direction?

A. I did not, sir.

Q. What opportunity was given to persons present there to examine the goods ?

A. Persons that were present went all through the factory and examined the goods for half an hour I should say before the sale commenced, or it might have been an hour.

Q. Do you know the state of the goods there—what there was there prior to the sale ?

A. Only from hearsay, and from my examination.

10

Q. Had any inventory been made by you ?

A. No, sir.

Q. Had you seen any inventory ?

A. I did not—only the inventory that the constable had.

Q. I am speaking of any inventory that you had prior to the sale ?

A. No inventory was given to me, but I saw the constable's inventory which was taken.

Q. You mean his levy ?

20

A. Yes, sir.

Q. Did Mr. Parker or anyone else on behalf of the company, show you any inventory ?

A. They did not, sir.

Q. How far did the persons that were there examine the property ?

A. I should say they examined it thoroughly as much as at any sale.

Q. This Mr. Smith you speak of from New York, what is his business or what was he in then ?

30

A. The J. O. Smith Manufacturing Co.; they dealt in a large variety of goods ; I don't know exactly what; I think stationers' materials are one of their specialties.

Q. Is he connected with that firm ?

A. Yes, sir ; I think it is a stock company.

Q. Do you know whether or not they purchased such kinds of goods as were sold ?

A. I know they did.

40

Q. And he was a purchaser of the company at the time?

A. Yes, sir.

Q. After the sale was over you gave instructions to Mr. Parker to continue the business; why did you do so?

A. I wanted to manufacture my goods up after I bought.

Q. The nature of that business is what, as to continuing the manufacturing process?

A. Yes, sir.

Q. Well, what is the nature of it; suppose the manufacturing process had stopped so that the thing had not been kept on for a day or two, what would have been the result?

A. Of course it would not have been near so good for the goods and there were orders to be filled.

Q. What was the state of any part of the property sold there, as to manufacturing process; I mean whether it was unfinished or finished?

A. Unfinished.

Q. Some of it?

A. Yes, sir.

Q. What was the necessity as to that manufactured stock being continued?

A. It was necessary to sell it to get my money out of it, and therefore to put it in a manufactured shape.

Q. Suppose it had been delayed for a day or two, or a half a day, or that there was any delay in the making of it, what would have been the consequence?

A. A delay of that short length of time, I presume there would not have been my absolute loss.

Q. After the process had been commenced should it not have been continued?

A. It ought to have been taken hold of at once, to make my money.

Q. You said, in answer to Mr. Condit, that Mr. Parker, in transacting your business, held himself

out as the secretary of the company, what do you mean by that, Mr. Squier?

A. I mean to say he was the secretary of the company of course; a company never dies, and he is always the secretary.

Q. Sometimes it dies—excuse me—go on?

A. Well, I meant to say, a company never dies, as I understand it, as long as there are debts.

Q. What do mean by saying that in transacting your business Mr. Parker held himself out as the secretary of the company? 10

A. Simply that he was the secretary of the company as he always had been; he always had been the secretary of the company and was still.

Q. BY Mr. LILLY: Mr. Squier, was you in the habit, when you sent your bills to the company, of including sales of two or three dates in them?

A. Occasionally.

Q. Were there ever any bills returned to you by the company, or any of its officers, for correction? 20

A. There were.

*Cross-examined by Mr. CONDIT:*

Q. You say you paid or advanced money on these assignments from the company to you; to whom did you advance the money?

A. There was only one person of the company that I recognized, and that was J. H. Parker, as secretary. 30

Q. You mean to say you paid it to him?

A. Yes, sir.

Q. Will you please explain what advantage the company would have if, their business stopped on the 11th of September, and it was run for your benefit afterwards, what advantage could accrue to the company by that payment to Mr. Parker?

A. To pay the debts of the company with the money.

Q. How do you know about that; you say you 40

paid it to the company ; what had you to do with the payment of the debts of the company ?

A. I had nothing to do with it.

Q. Rut you advanced it to the company ?

A. I advanced it to the company.

Q. Wiil you please explain what advantage the company would derive from the payment of this money to Mr. Parker, under the circumstances as you found them ?

10 A. Why, it is very simple ; he had to have the money ; he had got to pay the debts of the company.

Q. Who was this gentleman in New York who collected part of these debts and appropriated them ?

A. His name is Townsend.

Q. Is he the man who was talking and negotiating with you about the purchase of this property ?

A. Certainly.

20 Q. He is the one ?

A. Yes, sir.

Q. Did you forbid his collecting these accounts afier they were assigned to you ?

A. I did, sir.

Q. When ?

A. I don't remember the month.

Q. Well, did you know that he was collecting them from time to time, before you stopped it ?

A. I found it out subsequently.

30 Q. Suppose this arrangement you speak of had been carried out by Townsend, and he had taken this property, what could have been the effect upon the other creditors, besides yourself ?

A. They would have been paid if they, the bank, had not stopped them.

Q. Who is Mr. Chapman ?

A. A man in my employ at the factory.

Q. In what capacity ?

A. Packing and shipping clerk.

By Mr. JOHN WHITEHEAD :

Q. The question was put to you, what advantage to the company it would be to have its debts paid; would there be any advantage to anybody else, and if so, what; whether there were any other reasons that Mr. Parker wanted money for besides paying the debts?

A. Not that I am aware of, but I had a pride, of course, as I always have had, in anything that I have any connection with, to see that the debts shall be paid. 10

By the COURT :

Q. You have some account or memorandum of the money advanced upon these assignments, have not you?

A. Yes, sir.

Q. Please give me the date when the first advance was made under those assignments, and when the 20 last was?

A. I didn't bring that with me.

Q. You have not got your book here?

A. No, sir; I can send it to you.

Q. Well, have you any recollection when about the first advance was made?

A. I should say about the 15th or 18th, or around there.

Q. What month?

A. September. 30

Q. You have not the book containing that?

A. Not with me, sir.

Q. What book is that entry made in?

A. It is made in the check-book.

Q. In your check-book?

A. Yes, sir.

Q. Before bringing these suits, did you ask Mr. Parker to repay you the loan of \$167.71?

A. I did, sir.

Q. When? 40

A. The next day ; he only borrowed it for a day.

Q. And you requested him to return it on the 28th ?

A. Yes, sir.

By Mr. JOHN WHITEHEAD :

Q. One thing I forgot to ask you about (Hand-  
10 ing witness day book) ; what book is this, Mr. Squier ?

A. This was the book I kept, showing the goods that went out of the factory that belonged to me after I took charge of the company.

Q. Whose handwriting is this ?

A. Mr. Parker's.

Q. All of it ?

A. Yes, sir.

Q. Commencing on page 374, and all through is  
20 his ?

A. As far as I see.

Q. Just look and see if it is all his ?

A. It is not ; here on 403 and 404 it is in Mr. Beach's handwriting.

Q. Then all from 374 to 403 is in Mr. Parker's handwriting ?

A. Yes, sir.

Q. Including this heading "William S. Squier's  
accounts" ?

30 A. Yes, sir.

Q. All goods sold by you after you took possession ?

A. Yes, sir.

Q. And manufactured by you ?

A. Yes, sir ; it is what they call the day book ; it is so marked ; that is the proper name for it.

HALSTEAD C. BURNET, being a witness produced  
on the part of the aforesaid defendants, having been  
40 duly sworn according to law, deposeth and saith :

*Direct examination by Mr. JOHN WHITEHEAD :*

Q. Have you ever been in the business of manufacturing inks and other articles ?

A. Yes, sir.

Q. When did you first go into it ?

A. In the month of September, 1876.

Q. Under what circumstances did you go into that business ?

A. As agent for the Mechanics' National Bank ; Condit, Hanson & Van Winkle, and Mr. A. P. Condit. 10

By Mr. LILLY :

Q. The counsel in the case ?

A. Yes, sir.

*Further Direct :*

Q. How long did you continue in it as their agent ?

A. Until December 27th, I think, sir. 20

Q. What year ?

A. The same year, 1876.

Q. Then what change did the business take, if any ?

A. I then made a purchase of the stock, tools and fixtures on hand, and afterwards organized the company known as the H. C. Burnet Manufacturing Company.

Q. The execution of this paper is admitted ; it is the assignment by Mr. Condit and others (*hands the same to witness*) ; is that the assignment to you, Mr. Burnet, from the parties you were acting as agent for ? 30

A. Allow me to read it through, sir ; it appears to be the agreement.

By the COURT :

Q. Is that the bill of sale made to you by the persons of whom you purchased ?

A. I think it is, sir. 40

*Further Direct :*

Q. Then you say you continued that business until when, sir ?

A. The business as agent do you mean ?

Q. You continued the business after you purchased until when, sir ?

A. I think the month of July or August, 1878.

Q. On your own ownership as sole owner ?

A. As Prsident of the H. C. Burnet Manufacturing Company.

Q. When was that company formed ?

A. The month of January, 1877.

Q. What did you do with the property that was conveyed in the month of January, 1877 ?

A. I sold it to Mr. James N. Trimble.

Q. (*Handing witness a paper.*) Is that the bill of sale ?

A. Yes, sir.

20 By Mr. JOHN WHITEHEAD : That is also admitted.

Q. You sold out to Mr. Trimble ; how long was the business continued by that company, so far as you know ?

A. The business was continued, sir.

Q. Well, so far as you know, I mean ?

A. My connection with it ceased in the latter part of July, or the early part of August of the following year.

30 Q. Who was President of the company at the time of its formation ?

A. I was.

Q. When did you cease to be President ?

A. In July or August ; I am not certain as to the month ; either the latter part of July or the first of August, 1878.

Q. How did you cease to be President ?

A. I ceased to be the owner of any of its shares,  
40 and also wrote a letter to the Secretary at the time

previous to the meeting for election declining re-election as President.

Q. And from that time until now you have ceased your connection with the company.

A. Yes, sir.

Q. That was in the month of August, 1878?

A. Yes, sir.

Q. At the time of the sale by you to Mr. Trimble, what amount of stock and goods sold by Mr. Condit and others to you remained on hand? 10

A. I think the entire amount, sir.

Q. When you purchased from the company what did the goods consist of?

A. They consisted of a miscellaneous stock of mucilage, sealing wax, law seals, and inks of various kinds, and also tools and fixtures and stock, both manufactured and unmanufactured.

Q. You purchased from your vendors in 1876, the company was formed in January, 1877; now when you sold to Mr. Trimble what part of the original stock that you bought from Messrs. Condit and others was on hand? 20

A. I think it was all on hand, because the sale was almost immediately after my purchase.

Q. When you purchased from Messrs. Condit and others, what did you give in payment, if anything?

A. I gave four promissory notes amounting in in the aggregate to \$12,500.

Q. Are those notes here, Mr. Burnet? 30

A. These are the ones (produces the same), all bearing date December 27th.

Q. Are those the notes sir?

A. Yes, sir.

(By Mr. JOHN WHITEHEAD: I offer these notes in evidence; there are four of them, dated December 27th, 1876, and are made by Burnet; they are all payable to the order Mr. of himself at three months. No. 1 is at twenty- 40

four days for \$2,500; and three at three months; one for \$1,150; one for \$3,724 $\frac{61}{100}$ ; and the other for \$5,125 $\frac{39}{100}$ .)

Q. How were those notes paid or settled?

A. One was paid at maturity.

Q. Which one?

A. The one falling due on twenty-four days after date for \$2,500, that was paid at maturity, the balance were renewed upon the payment of the \$2,500  
10 for three months.

Q. Look at these notes (handing witness some notes); are those the notes given in renewal of those first notes?

A. Yes, sir; I believe they are.

(By Mr. JOHN WHITEHEAD: I have here three notes, which I offer in evidence; they are made by the witness, payable to the order of himself, dated March 30th, 1877, at three  
20 months, one for \$3,844 $\frac{94}{100}$ , another for \$2,793 $\frac{46}{100}$ , and another for \$862 $\frac{59}{100}$ .)

Q. When these fell due what was done then?

A. Another payment was made of \$2,500, and the balance of the notes were renewed for the same length of time.

Q. (Handing witness three notes.) Look at these and tell me if these were the notes given in renewal?

A. Yes, sir.

30

(By Mr. JOHN WHITEHEAD: I offer in evidence these three notes made by the witness, payable to his order, each dated July 3d, 1877, one for \$575, another for \$1,862 $\frac{39}{100}$ , and another for \$2,562 $\frac{69}{100}$ .)

Q. Now when these notes fell due what was done with them?

A. I think they were renewed, sir, without any  
40 payment, for three months.

Q. What notes were given in renewal for them ?

A. I think my own notes were given at that time, July 3d.

Q. Yes, sir ; I have examined you about them, but when those notes came due what notes were given in renewal of them ?

A. The notes of the H. C. Burnet Manufacturing Company.

Q. Are these the notes that were given in renewal (handing witness some notes) ? 10

A. Those are the notes, sir.

Q. Now how did those notes come to be given by you, sir ?

A. When my individual notes matured, or were about to mature, I went to Mr. Baldwin, the cashier of the Mechanics' Bank, and stated my inability to make any payment in cash upon them, and asked that they might be renewed ; he said to me if I would give the company's notes with Mr. Coe as an endorser he would renew the notes for an additional 20 three months ; I therefore acceded to his request, after arguing the matter with him and offering some objections.

Q. What objections ?

A. I stated I did not wish to give the company's notes, that it was my personal indebtedness, and I thought he ought to accept a renewal of my own notes, but he said as I had parted with the property to the company he preferred that I should give the company's notes, and insisted upon my doing it, 30 and I acceded to his demand ; I felt that my own notes would go to protest, and my individual credit, as well as the company's credit, would be injured thereby.

(By Mr. JOHN WHITEHEAD: I offer in evidence three notes made by the H. C. Burnet Manufacturing Company, dated October 6th, 1877, each payable in three months after date, one for \$2,580 $\frac{36}{100}$ , one for \$1,879 $\frac{51}{100}$ , one for \$580 $\frac{31}{100}$ .)

Q. I notice, Mr. Burnet, that the corners of these notes, right after your name, are torn off, was there any word or character following your name there, Mr. Burnet, and if so, what was it?

A. Treasurer.

Q. At the time those notes were given who was the treasurer of the company?

A. I was, sir.

Q. Where were those notes signed, Mr. Burnet?

10 A. They were signed at the office of the company, on River street.

Q. How soon after the arrangement was made with Mr. Baldwin for the renewal of your notes?

A. Immediately afterwards, sir; I gave those notes in place of my own on the date on which mine fell due, October the 6th.

Q. What authority, if any, did you have from the Board of Directors of the H. C. Burnet Manfg. Co. to sign those notes?

20 A. I had no authority from the board.

Q. How much money did you pay on your own individual notes which had been given and renewed?

A. I think it amounted to \$7,500; there may have been a little interest on the ones renewed, but the amount was about \$7,500.

Q. When these notes dated October 6, 1878, fell due, how were they taken care of; (handing witness some notes) look at these notes, if you please?

30 A. There was a payment made upon them, sir, of about \$1,200; I don't remember the amount; and new notes—the new company's notes were given for the balance for three months.

By Mr. LILLY:

Q. Paid what date?

A. January 9 is the day it fell due.

Q. 1878?

40 A. Yes, sir.

*Further direct:*

Q. Part of your name is torn from those notes, I notice, Mr. Burnet; did any word follow your name?

A. Yes, sir; the word "treasurer."

Q. You were still the treasurer at the time the notes were given?

A. Yes, sir. That tearing off is a sort of a cancellation of the note.

10

BY MR. J. WHITEHEAD: I offer these notes in evidence. There are three notes made by the H. C. Burnet Manuf'g Co., H. C. Burnet, Treasurer, each dated January 9, 1878, one for \$1,974.85; one for \$1,435.14; one for \$443.10; payable to the order of H. C. Burnet, Treasurer; endorsed by H. C. Burnet, Treasurer, and Ernest E. Coe.

BY MR. CONDIT: Q. Are they all alike?

20

A. Yes, sir; they are all alike, and some are endorsed by other parties. There is a little difference in one note: that has the name of H. C. Burnet, Treasurer, upon it. One is payable to the order of J. W. Plume.

*Further Direct:*

Q. When these notes of January 9 fell due, what then was done?

A. I think they were again renewed, sir, by giving new notes, with interest, in payment of them

30

Q. (Handing witness some notes.) Are these the notes given in renewal?

A. Those are evidently the notes.

BY MR. WHITEHEAD: I offer in evidence three notes made by the H. C. Burnet Manuf'g Co., H. C. Burnet, Treasurer. The word "Treasurer" appears here without being torn off, but part of the name of Burnet is torn off; 40

dated April 12, 1878 ; payable at 60 days ; one for \$1,950 ; one for \$1,400 ; one for \$440. The endorsements are about the same ; Coe's name is on them all.

Q. Now, when these notes fell due, Mr. Burnet, on June 14, 1878, state what was done with those notes ?

A. My impression is they were renewed, sir.

10 BY MR. J. WHITEHEAD: Have you got the notes upon which the suit was commenced ?

BY MR. CONDIT: No, sir ; we have them at the office, but the record is here ; the circuit record shows them.

Q. They were renewed by what notes ?

A. The same notes ; the company notes.

Q. Do you remember the amount of them, sir ?

20 A. I think it was \$3,790.

Q. Altogether ?

A. It may vary from that somewhat. I am not sure whether interest was included or it was paid in cash. It was very near that amount.

Q. Mr. Burnet, what authority, if any, did you have from the directors of the H. C. Burnet Manufacturing Company to sign any of these notes which you gave to the Mechanics' Bank ?

A. No authority, sir, that I am aware of.

30 Q. (I now exhibit to the witness two copies of summons in the case of the Mechanics' National Bank at Newark against the H. C. Burnet Manufacturing Company and Halsted C. Burnet, issued September 18, 1878, returnable 28th September, 1878.) Did you ever see those before ?

A. Yes, sir.

Q. Do you remember when ?

A. They were served on me at my home on Thursday, September 19, 1878, as appears by the  
40 endorsement in my handwriting.

Q. I now show the witness a paper purporting to be a copy of a declaration in the case of the Mechanics' National Bank at Newark against The H. C. Burnet Manufacturing Company and Halstead C. Burnet ; did you ever see that paper before ?

A. Yes, sir.

Q. When ?

A. It was served September 28, the same year.

Q. 1878 ?

A. Yes, sir.

10

Q. Who served that paper on you, sir ?

A. I think that was served upon me by young Mr. Whitehead, a clerk for Whitehead & Condit.

Q. Did you say anything to that young gentleman, when he called and served that upon you, as to the propriety of its being served on you ; and if so, state what it was.

A. I did, sir ; I told him I was not the president of the company, and it was improper to serve the paper upon me, as I had nothing to do with the 20 company or its affairs.

By Mr. JNO. WHITEHEAD: I offer in evidence these summonses and declarations, to show that they were served on Mr. Burnet, and that the Court obtained no jurisdiction over the corporation in the suit mentioned in the bill of complaint, and on which the complainants ask for relief.

(Objected to.)

30

By the COURT: I overrule your offer of the copies of summons and declaration, on the ground that the evidence is irrelevant.

By Mr. LILLY: I offer in evidence a certified copy of the original summons in the case, for the same purpose.

(Objected to ; overruled.)

40

By Mr. JNO. WHITEHEAD : On this point I will put in these papers and the notes.

Q. Mr. Burnet, these last notes of yours fell due — ; what dates are the last notes given ?

A. Personal notes or company's notes ?

Q. The company's notes, given in renewal of these ?

10 A. They fell due ; do you refer to this particular batch of notes ?

Q. Yes ; those are the last notes you had in your possession ; now the notes given in renewal of those ; when did they fall due ?

A. I think in September, 1878.

By Mr. JNO. WHITEHEAD : Is there any question raised as to these notes that you sued upon, being the notes given in renewal of these last ?

20 By Mr. CONDIT : None at all ; Mr. Burnet's history of the notes is correct.

By Mr. JNO. WHITEHEAD : I offer in evidence a bill of sale from James L. Trimble to the H. C. Burnet Manufacturing Co.

Q. Why did the name of Coe go upon these notes ?

A. Mr. Baldwin stated, sir, that he wished additional security.

30 Q. Did Mr. Baldwin ever make any inquiry through you as to your authority to sign these notes ?

A. No, sir.

Q. You remained there at the company until the month of July or August, I think you said, 1878 ?

A. Yes, sir.

Q. Were you there at or about the factory at the time of the sale by the constable under the judgment in favor of Mr. Squier ?

40 A. No, sir.

Q. At or about that time—how late were you there prior to that sale?

A. In the early part of August, I think, sir.

Q. What was the condition of the property when you were there last, as compared with what it was at the time you sold it to Mr. Trimble?

BY THE COURT: There is a question which ought to precede that, as to whether he made any examination.

10

Q. When you left as president, did you know the condition of the property?

A. I did, sir.

Q. What part did you take in the business?

A. I was general manager, acting president and treasurer, and had the chief superintendance of the factory.

Q. Who purchased the goods?

A. I generally purchased them, or they were purchased under my direction.

20

Q. What part of the time were you there at the office and factory?

A. Well, I was there during most of the time during the day, from perhaps nine or ten in the morning until six or seven at night, and sometimes later.

Q. Did you know of the condition of the property at the time you left?

A. Yes, sir.

30

Q. Intimately or only generally?

A. Well, I would state there had been no account of stock taken since the month of January of that year.

Q. 1878?

A. 1878.

Q. At the time you left, what was the condition of the property as compared with what it was when you sold to Mr. Trimble?

A. It had changed very materially, from the fact that we had sold off a large part of the goods pur-

40

chased of the bank, but the tools and fixtures, however, remained on hand, and a portion of the old stock, both manufactured and unmanufactured, which was not considered of much value.

Q. What do you mean by old stock ?

A. The stock I received from the bank in 1876.

Q. What was the value of this old stock, Mr. Burnett ?

A. I hardly know, sir ; much of it was packed in  
10 cases ; most of it was ink, which had deteriorated,  
some from the samples we had opened from time to  
time, and a portion of it was glass bottles, old and  
not of a marketable style; I should think, sir, of not  
more than \$250, in value, independent of the tools  
and fixtures.

Q. What were the tools and fixtures worth ?

A. I should think they could have been replaced  
for about \$500, new and fresh.

Q. What was the character and age of those  
20 tools and fixtures ?

A. In regard to the character of them, they consisted of moulds, 10 or 12 iron moulds for manufacturing wax, brass dies for stamping, some tanks for holding ink, copper vessels and porcelain vessels for boiling wax in, and furnaces, portable and set in brick, and various other small articles which were used in the business.

Q. What was their character as to use and age ?

A. Oh, well, they were old, much of them were  
30 pretty well used ; they had been in use for a number of years.

Q. They might have been replaced new for \$500 ?

A. Yes, sir.

After Recess.

Mr. BURNET, resumed.

(By Mr. LILY :

Q. I understood you to say that the goods and  
40 materials for carrying on that business were purchased either by you or through your directions ?

A. Yes, sir.

Q. How were those goods bought ?

A. Bought of whom ?

Q. Of Mr. Squiers; at what length of time ?

A. They were bought on thirty days' time, sir; the account was an open account.

Q. Then suppose the account was not paid in thirty days; what then ?

A. We were in the habit of giving a note at 3 or four months, as suited our convenience, with interest. 10

Q. Then the accounts of the thirty days' drew interest, did they ?

A. Yes, sir.

Q. Who made the purchases in the month of July, 1878 ?

A. My impression is that Mr. Parker made most of those purchases, as I was not at the factory very much myself, during that month.

Q. During that month do you know whether the company ever bought a bill of goods amounting to between three to four hundred dollars, of Mr. Squier, at one time ? 20

A. I do not.

Q. The goods, if I understand you right, were all ordered through you—you gave the directions to order them ?

A. Yes, sir.

Q. And did you give any direction or order for a bill of goods amounting to between three and four hundred dollars ? 30

A. I have no recollection.

Q. When did you leave the factory ?

THE VICE-CHANCELLOR: He has stated that ; do not go over it.

Q. Mr. Burnett, how long was it after you purchased the goods from Condit, the banks and Van Winkle, so that you held those goods until you sold them to Mr. Trimble—what was the length of time—about how long ? 40

A. About 30 days.

Q. You held them ?

A. Yes, sir.

Q. From whom did the two banks, Mr. Condit and Condit & Van Winkle, get those goods ?

A. I have understood from one Mary Ann Dovell.

THE VICE-CHANCELLOR: Only what you know.

10 Q. You were placed there then, as I understand it after the banks, Mr. Condit & Condit, Hanson & Van Winkle got those, as their agent ?

A. I was, sir.

Q. Was there ever any understanding between you as president of the H. C. Burnet Manufacturing Co., or as an individual with Mr. Squire, that he was to obtain these judgments and make a sale of this property so as to keep the company from paying any of the debts ?

20 A. No, sir.

Q. No understanding of any kind ?

A. None whatever, sir.

Q. Do you know how many goods were on hand at the time the constable sold it ?

A. No, sir; I do not.

Q. Do you know when the last inventory was made of that property ? I understood you to say in January; am I correct in that understanding ?

A. I so stated; In January, 1875.

30 Q. And there was none made after that to your knowledge.

A. None, to my knowledge.

By Mr. WHITEHEAD:

Q. You are familiar with the manufacture of the goods in the establishment; what would be the effect of the manufacture being stopped for a day or two while the process of manufacturing was going on ?

40 A. Well, there would be no material effect, sir,

unless the mucilage, for instance, was in process of manufacture or the wax actually boiling or under the effect of heat.

Q. Suppose the manufacturing process should be suspended for any length of time, a day or so, while the actual processes were going on, what would be the effect?

A. Well, I suppose the effect would be injurious to the goods.

*Cross-examined:*

10

By Mr. CONDIT: Q. Who is James M. Trimble?

A. A gentleman of this city; a member of the bar I believe.

Q. Did he pay you any money at the time you transferred this property to him?

A. No, sir.

Q. He simply was an instrument for transferring the property to the company, was he not?

A. Yes, sir.

20

Q. And when were these notes that you have spoken of, and which have been offered in evidence first given by the company; what time; do you remember?

A. In October, I think, sir, 1878.

Q. When were the first notes given by the company?

A. To the Mechanics' Bank.

Q. The Mechanics Bank.

A. I think October, 1878.

30

Q. No; the last notes came due September, 1878, when were the first notes given?

A. It may have been 1877.

Q. The company were not organized —

A. October 6th, 1877.

Q. Who were the directors of that company at that time?

A. Ernest E. Coe, Dr. James B. Burnet and myself.

Q. And you were the sole directors?

40

A. Yes, sir.

Q. Then two of the directors of that company were upon the paper?

A. They were, sir.

Q. Who was James B. Burnett?

A. My brother?

Q. What was his occupation?

A. Physician.

Q. Did he ever have any active interest in the  
10 management of the company?

A. No; except to attend the meetings of the board.

Q. How often did the board meet?

A. Not very often.

Q. Have you any minutes showing how often the board of directors met?

A. There is a minute book.

Q. Where is it?

A. I presume it is in the hands of the Receiver.

20 Q. How much stock did you own at that time?

A. At what time?

Q. At the time of October, 1877, when these notes were given.

A. My impression is that I only held a share.

Q. One share?

A. One or five; I have forgotten now.

Q. How much did your brother hold?

A. I think he held five shares.

Q. How much did Coe hold?

30 A. The most of the balance.

Q. That is, the most of the \$15,000?

A. Yes, sir.

Q. How many other shares other than what Coe represented were held by other parties at that time?

A. Probably less than five.

Q. So that all the company with the exception of five shares were represented on that note?

A. Yes, sir.

40 Q. Did I understand you to say that Mr. Baldwin stated at the time that he would require the com-

pany's note because the company had the property which the note represented, and for that reason he wanted the note of the company ?

A. He did.

Q. That is the reason he gave ?

A. That is my recollection ; yes, sir.

Q. Was James Parker at that time the secretary of the company ?

A. At what time, sir.

Q. October, 1877, when these notes were given ? 10

A. No, I think not.

Q. Who was ?

A. I think Ernest C. Coe was secretary at that time.

Q. You were president, were you ?

A. I was.

Q. Ernest C. Coe was secretary ?

A. Yes, sir.

Q. And who was treasurer ?

A. I held both places, president and treasurer. 20

Q. So you had all the officers of the company upon the note ?

A. Yes, sir.

Q. Was the note regularly entered in the books of the company ?

A. It was in January, I think, sir ; it so appears on the bill book.

Q. In January, 1878 ?

A. 1878.

Q. And the renewals were all entered ? 30

A. The renewals were all entered, I believe.

By Mr. JOHN WHITEHEAD :

Q. Were the first notes entered on the book, do you say ?

A. I do not know, sir.

*Further cross-examination :*

Q. How long did this organization that you have spoken of, of October, 1877—how long did that continue ? 40

A. The company ?

Q. Yes ; was there any change made of the officers of the company ?

A. Yes, sir ; an election in the month of July, 1878, when Ernest C. Coe resigned and Mr. Parker was elected secretary in his place.

Q. Up to what time do you say that you continued there ?

A. Until the latter part of July or the early part  
10 of August, 1878 ; I have no date to go by.

Q. Were you not president of the company until August 28, 1878 ?

A. I think not, sir.

Q. On the 26th of August, 1878 ?

A. I think not, sir ; I could not say positively ; I have no record since the time my declination went in.

Q. (Handing witness a paper.) Did you ever make out any certificate to be sent to Trenton ?

A. I did, sir.

20 Q. In February, 1879 ?

A. I think not, sir.

Q. Did you ever see the original of which that is a certified copy ?

(Mr. Lilly objected.)

(Objection overruled.)

A. I do not remember, Mr. Condit.

30 Q. You don't remember to have ever seen that certificate ?

A. I think I have, but I do not remember possibly having seen the original of it ; my impression is I have seen a certificate of that kind.

Q. You were examined, were you not, on the supplementary proceedings upon this judgment obtained by the Mechanics' Bank against you ?

A. Yes, sir.

Q. Do you remember a question of this kind being put to you—

(The Vice-Chancellor stated that complainant's counsel could show that the witness had made declarations different from those he now made.)

Q. (Counsel reading.) "Did you ever hear of any arrangement or understanding between the company or any officer of the company whereby Squier was to return the property purchased by him at the sale to the company or any person interested in the company in satisfaction of his claim?" Do you remember any such question? 10

A. I do.

(Mr. Lilly objected to this as not cross-examination.)

(Objection overruled.)

Q. And did you not answer as follows: (Counsel read.) "As the company was in trouble, it was thought if Squier came in, some arrangement could be made for carrying it on; the sale was allowed by the company under this understanding; they had no defense on any ground as I am aware of; I think Squier's claim against the company was about seven or eight hundred dollars at the time of the sale; I have no means of showing: I never took it from the books." I think it is "I never got it," or something, "from the books." Do you remember making such an answer as that? 20 30

A. I remember the question, sir; I do not remember the answer as fully as that; my recollection of it was—shall I state it as I remember it?

Q. You say you did not make any such answer as that?

A. No, sir, I do not say that; I say I remember the question, but I do not remember the answer as fully as you have read; my recollection is this, that I did state that I thought Mr. Squier was not unfriendly to the company, and that it was hoped and 40

believed that some arrangement could be made for the repurchase of these goods and the carrying on of the business from Mr. Squier; that is my recollection.

Q. You don't remember saying "the sale was allowed by the company under this understanding?"

A. Well, I don't remember it now, sir; that was some time ago; I presume if it is over my signature I said so.

10 Q. (Handing witness a paper.) Is that your signature to that paper?

A. Yes, sir.

*Re-direct examination:*

By JOHN WHITEHEAD: Q. Do we understand you to say now that there was any arrangement between the company, so far as you know, and Mr. Squier that he was to make a re-transfer of that property which he had bought to the company?

20 A. No, sir; all I learned was through Mr. Parker, the secretary.

Q. Then all that you know about the matter is what Mr. Parker told you?

A. That is all; I never had any conversation with Mr. Squier in regard to the matter at all.

Q. Mr. Squier and you never had any sort of arrangement about it?

A. Never exchanged a word, sir, that I remember, on the subject.

30 Q. Your interest in the company ceased prior to that sale?

A. It did, sir.

Q. And you had no interest whatever in any arrangement that might be carried out between Squier and the company?

A. None whatever, except as the company might be reorganized; I might be.

Q. The question to which Mr. Condit has referred there and to which he has called attention was given  
40 by you at what proceedings?

A. Supplementary proceedings.

Q. Against whom ?

A. Against myself.

Q. In what judgment ?

A. Judgment of the Mechanics Bank as endorser upon those notes.

Q. Was the company a party to those proceedings, so far as you know ?

A. I do not know ; I think not.

Q. Some questions have been put to you touching 10 the stockholders in the company at the time these notes were first given to the Mechanics Bank ; who were the stockholders of the company at that time, so far as you know or remember ?

A. Ernest E. Coe, Doctor J. L. Burnet, Frank Wiedenspahn, a party by the name of Winsell. I think, or Winsdell and myself; there may be others but I have forgotten if there were.

Q. Were these other stockholders consulted by you or any other of them about the giving of these 20 notes ?

A. No one but Mr. Coe.

Q. Did you make known to any of those stockholders the fact that you had given those notes ?

A. I did not, sir.

Q. Did you have any consultation with James B. Burnet, about the giving of these notes ?

A. No, sir.

Q. So far as you know what did he know about their being given ? 30

A. Nothing that I am aware of.

Q. When Mr. Coe first endorsed the notes did you give him any security for the endorsement ?

A. I gave him all my interest save a few shares in the capital stock of the company.

Q. What was the object of your giving him those shares ?

A. I gave them as security on those endorsements of my paper.

Q. Was Mr. Coe consulted as director or stockholder about that note being given?

A. No; as an individual.

Q. At the time Mr. Coe endorsed those notes what was his financial standing personally?

A. The company's notes, do you refer to?

Q. Yes?

A. It was very good I believe.

Q. He was considered to be wealthy, was he not?

10 A. He was I believe, sir.

Q. When did you first hear that the company was in any trouble?

A. I think in the month of July.

Q. The month of July, 1878?

A. 1878, when the first judgment was recovered.

Q. What judgment was that to which you refer?

A. The judgment of Gouch Bros.

Q. Do you know anything about that claim?

A. How do you mean, sir?

20 Q. As to whether the company admitted it as a just claim or not?

A. I think they did.

Q. Was there not a dispute about it?

A. I do not remember now that there was, sir; I have no recollection of it.

Q. There is one question I neglected to put to you on the principal examination which just occurs to my mind, what were the terms of credit upon which those goods were sold?

30

BY THE VICE-CHANCELLOR: Mr. Lilly has examined upon that point.

Q. When this property was transferred to the company, what did you receive in payment?

A. Half the capital stock.

Q. Transferred to you?

A. Yes, sir.

40 Q. That was by arrangement between you and whom.

A. Mr. Coe; we were to share alike in the division of the stock.

Q. What was the capital stock, the whole amount?

A. \$20,000?

Q. Was there anything left in the treasury, any stock?

A. Yes, sir.

Q. How much?

A. 5,000 dollars.

Q. Was that sold?

10

A. It was.

Q. When?

A. I think the sale took place in January, 1878?

Q. Who bought them?

A. Stephen B. Sanderson.

Q. Do you know anything about there being an attempt made to resuscitate the company—after Mr. Squier bought?

A. There was such an attempt.

Q. How soon after the sale?

20

A. My recollection is it was very shortly after the sale.

Q. Who was interested in that?

A. Mr. Sanderson, by his father-in-law, Mr. Cox, Mr. Townsend, who acted as the agent of the company in New York.

Q. Your answer to the question to which Mr. Condit has called your attention has reference to what, where you said: "it was thought if Squier came in some arrangement could be made for carrying it on," 30 what arrangement do you refer to in that answer?

A. Will you just read that testimony again, please?

Q. (Counsel read.) "As the company was in trouble it was thought that if Squier came in some arrangement could be made for carrying it on."

A. Well, the arrangement with these parties in New York, primarily, who would put in a large amount of money, I was informed in the early part of the year, was they would probably be willing to 40

put in some money at some future time if it was necessary.

Q. You say, "as the company was in trouble it was thought if Squier came in"—by whom was it thought?

A. This is what Mr. Parker stated to me.

Q. Then your answer there was based upon your own information, was it not?

A. Mr. Parker's entirely.

10 Q. All you knew then upon which you based that answer was derived from Mr. Parker?

A. Yes, sir; for I had had no conversation with Mr. Squier.

Q. Or anybody else?

A. No, sir.

Q. The H. C. Burnet Manufacturing Co. went into existence in January, 1878?

A. 1877, sir.

20 Q. And it continued to do business up to what time?

A. Sometime in the latter part of 1878.

Q. What was its credit in the business community?

A. I believe it was fair.

Q. Was there any difficulty in purchasing goods?

A. None whatever.

Q. What terms were you and Mr. Squier upon?

A. Very friendly terms.

Q. Were your dealings with him large or small?

30 A. They were large; we bought most of our materials of him in the way of our gum and mucilage—much of it, at least.

Q. That continued up to what time?

A. Up to the time my connection with the company ceased.

*Re-cross examination:*

Q. How was Mr. Coe related to you?

A. Brother-in-law.

40 Q. How are you employed at present?

A. I am not engaged in business at all.

Q. Since Mr. Squier has been in charge of the business down there, have you aided him at all?

A. Yes, sir.

Q. How recently?

A. Not within 3 or 4 months.

Q. Up to that time you helped him?

A. Yes, sir.

Q. In what position?

A. No position? 10

Q. Without compensation?

A. Without compensation.

*Further re-direct examination :*

Q. You say you were helping Mr. Squier—will you explain to what extent?

A. Simply as my previous knowledge of the business. I was aiding the hands who were putting up the goods, and going about the factory. There was a new set of hands came in, and I aided them in putting up the goods and rendering them marketable. 20

Q. How soon after the sale to Mr. Squier did you go in there to help him?

A. Well, I do not remember, sir; probably a few weeks.

Q. How long did you continue there?

Q. I think until the early part of the fall; probably four months. 30

Q. The sale was in September?

A. Well, I neglected to say I was ill during a period of that time; confined to my house with scarlet fever; I was not out of the house.

## IN CHANCERY OF NEW JERSEY.

	Between—	
	THE MECHANICS' NATIONAL BANK	
	OF NEWARK,	
		Complts,
10	and	
	THE H. C. BURNET MANUFACTURING	
	COMPANY, <i>et als.</i> ,	
		Defts.

Transcript of shorthand notes of part of the testimony given in the above stated cause before the Hon. ABRAM V. VAN FLEET, Vice-Chancellor, at his Chambers, in the City of Newark, N. J., on Thursday, January 22d, 1880.

PATRICK T. SMITH, a witness called by and sworn on behalf of the defendants, testified as follows :

*Direct-examination :*

BY MR. LUM : Q. What is your business ?

A. Constable.

Q. In what Court ?

30 A. The First District Court.

Q. Of the City of Newark ?

A. The City of Newark.

Q. As such constable did you receive any execution ?

THE VICE-CHANCELLOR : This is the officer who made the sale ?

DEFENDANTS' COUNSEL : Yes, sir.

THE VICE-CHANCELLOR : Go right to it ?

40 Q. Are you the officer who made the sale ?

A. Let me see the execution and I can tell.

Q. Under the execution of Squier against the Burnet Manuf'g Co. ?

A. Yes, sir.

Q. Will you just state to this Court just exactly what transpired so far as you know—did you advertise this sale ?

A. I did.

Q. How ?

A. By virtue of these executions I made a levy 10 and advertised them for sale.

Q. How many advertisements did you make ?

A. I suppose three notices, and attached one to each execution, and three in the public places in the city of Newark.

Q. The sale took place when ?

A. My memory does not serve me just right; I must refer to the advertisement; September 11th, 1878, at 3 o'clock in the afternoon.

Q. The sale took place at that time ? 20

A. It did, sir.

Q. Will you please tell me what took place at that sale ?

A. I sold the goods and chattels; I advertised the goods and sold them on that day and sold them for so much money; which the executions will speak for themselves.

Q. How many persons were present at that sale ?

A. My memory does not serve me just now; there might perhaps have been twenty-five or thirty people. 30

The VICE CHANCELLOR: We do not want to know *might* have been or *perhaps* was.

WITNESS: My recollection is about twenty-five; I did not count them, sir.

Q. Was there much bidding on that sale ?

A. There was, I think, three or four different bidders. 40

Q. Do you remember what the property was struck off for ?

A. My impression is that the property was struck off for about \$1,200 ; I think \$1,200.

Q. To whom ?

A. Mr. Squier was the purchaser, if my memory serves me right now.

Q. What instructions did you receive from Mr. Squier concerning this sale, any ?

10 A. None, sir.

Q. The executions then were merely placed in your hands to execute ?

A. Yes, sir.

Q. Did you execute them according to law ?

A. I did, sir, to the best of my knowledge.

Q. Did you say Mr. Squier gave you no instructions ?

A. None, sir.

20 *Cross-examination :*

By Mr. CONDIT : Q. How were these goods in that building, as to location ?

A. Well, they were all over the factory, indoors and outdoors.

Q. Is it your practice when the articles are numerous and of different parts to sell them as a whole ?

A. Sometimes I do and sometimes I don't, sir ; I ask the purchaser, or the plaintiff in the case, how he wishes them to be sold.

30 Q. Who did you ask in this case ?

A. I think I asked the parties who were present how they wanted the goods sold, whether in lots or otherwise.

Q. Whom did you ask ?

A. I could not say, sir, who made the reply ; my memory does not serve me just now.

Q. Would you take a reply from anyone unless they represented the plaintiff ?

A. Unless there was objection made I should.

40 Q. Did you receive positive instructions that you

were to sell the property as a whole ?

A. No, sir ; I did not.

By the VICE CHANCELLOR: Q. Do you not remember of whom you inquired for directions how to sell the property ?

Q. No, sir ; I do not.

*Further cross-examination :*

Q. Have you no recollection about it ? 10

A. My memory does not serve me ; I did not note those facts because I did not suppose they would ever come up again.

Q. Did you get a request from somebody to sell this property as a whole ?

A. No, sir ; I was asked to sell them in lots.

Q. You were asked to sell them in lots ?

A. Yes, sir.

Q. Why didn't you ?

A. I did. 20

Q. In two or three different lots ?

A. Yes, sir.

Q. The goods and chattels out of doors were sold in one lot ?

A. Yes, sir ; that was the stone ware, &c., and I think the goods and chattels upstairs and also in the office were sold in another lot, and also in the factory where the oils was manufactured, and so we sold another lot ; I think three lots, if my memory serves me right. 30

Q. Have you any memorandum to show ?

A. No, sir.

Q. Was there any such bid as nine hundred dollars made for the whole property ?

A. No, sir ; there was not.

Q. That was not the way the bidding was done ?

A. I do not recollect any such bid.

Q. Who was the purchasers of these different lots ?

A. That I cannot tell. 40

Q. Have you any memoranda to show ?

A. I have not.

Q. You kept no memorandum of the sale ?

A. I have not any memorandum ; I sold the goods, noted in my execution the amount received, and took a receipt in the execution for the amount that was received.

Q. You cannot tell any more definitely than you have stated who gave you instructions of the man-  
10 ner of the sale, or as to the mode of sale ?

A. No, sir ; for I did not note it.

Defendant rest.

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IN CHANCERY OF NEW JERSEY.

Between—

20 THE MECHANICS NATIONAL BANK AT  
NEWARK,  
Complainant,

*and*

THE H. C. BURNET MANUFACTURING  
COMPANY, and WM. S. SQUIER,  
Defendants.

30 Before the Hon. ABRAHAM V. VAN FLEET, Vice  
Chancellor.

MESSES. WHITEHEAD and CONDIT, for the Com-  
plainant.

Mr. JOHN LILLY, and Mr. JOHN W. WHITEHEAD,  
for the Defendants.

Transcript of a portion of the testimony taken in  
the above cause, on Wednesday, the 21st day  
40 of January, A. D. 1880.

ELIAS N. MILLER, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith :

*Direct-examination* by Mr. CONDIT :

Q. You are the Receiver appointed in this case?

A. I am, "sir.

Q. Did the books of the company come into your hands after your appointment?

A. There came into my possession books of accounts, which were delivered to me as the books of The H. P. Burnet Manufacturing Company. 10

Q. (Handing witness a book). What book is that?

A. This appears to be a cash-book, commencing on the 2d January, 1878, the entries terminate on the 30th September, 1878.

Q. Are there many entries between the 11th and 30th?

A. There are entries between those dates covering about half a page, both on the debit and credit sides. 20

Q. (Handing witness a book). This is what?

A. This is a ledger.

Q. What time was this kept?

A. The merc handize account which I take as the standard is open from the first January, 1878, and the closing entry ia the account when the books came to my hands was the 30th September, 1878; there are subsequent entries made either by me or under my direction.

Q. (Handing witness another book). What is this book? 30

A. This is the bill book.

Q. What time does that seem to cover?

A. It is hardly possible to state with accuracy the period this covers; I find one page without other date than that pertaining to these head entries; the following date commences with January, 1878. the record is in months.

Q. By Mr. WHITEHEAD: Is that the bills receivable and payable? 40

A. Yes, sir ; in the bills receivable there are three notes entered on the first page of the book. The book is to exhibit both bills receivable and payable, one entered on each side of the page, but the page to which I now refer is only the entries of bills receivable. I mean the entry of the three items, but it is without any date at the head of the page ; they matured, however, according to the entries, in July and February, 1877, and are entered January, 1878.

10 Q. They matured in what months ?

A. Shall I give the items ?

*Further direct :*

Q. Give the entry ?

A. There is one entry, bills receivable, due July 9th, 1877, another February 23d, 1878, another January 24th, 1878. There are no entries on that page of bills payable. Then follows in regular order the bills payable and bills receivable for the month as they accrue, January, 1878, and up to and including March, 1879.

20 Q. What time did you take possession of that property ?

A. On the 11th January, 1879, I think ; it does not vary more than a day from that ; my recollection is Tuesday, January 11th.

30 Q. What book, if any, contained the record of the transaction, so far as you can ascertain, of that company or of Mr. Squier in connection with that company, between September 11th, or September 30th, and the time you took possession of that property ?

A. I find a book which is marked on the back, "Cash" ; it is a cash-book, evidently, disused, and relating to transactions as far back as 1876, and part of 1877 ; in that book I find entries in pencil of various cash transactions, receipts and disbursements, and I find also two loose sheets of paper written in ink, containing evidently transactions, receipts and disbursements, cash transactions, com-

40

mencing on the 4th October ; these leaves are manifestly taken from the back of this book, and were originally a part of it and those leaves have been taken ; that is evident from the pages and the character of the paper ; I don't know whose handwriting it is.

By Mr. LILLY : Q. I know whose handwriting it is.

A. Well, I am not prepared to say.

10

*Further direct :*

Q. Does that book contain an actual record of the transactions of that business September 30th, and the time, January 11th, when you took possession ?

A. Of all that has come under my observation.

By Mr. WHITEHEAD : Q. That is the cash-book you speak of ?

A. Yes, sir ; with the exception of some loose memoranda which apparently related to collections, and which I have here, pinned fast to these papers, and which were with these papers when I took possession of them.

20

(Mr. LILLY : I object to that evidence. Objection overruled.)

*Further direct :*

Q. Have you had considerable experience as a bookkeeper and accountant ?

A. I have had a somewhat broad experience in examining books of account.

30

Q. Were you able, from the record of the transactions of that business, to determine in what condition the business was, accurately ?

The COURT : At what part ?

Mr. CONDIT : Between those periods ; what I want to attract the witness' attention to is as to the manner in which the books were kept, whether they were kept in such a man-

40

ner as to show him the condition of the business on the 11th of January, when he took possession of the books.

Mr. WHITEHEAD : Your question is as to what ?

Mr. CONDIT : What condition the books were in ?

10 Mr. WHITEHEAD : That is a proper question ; but what he could do with them, or could not do, is not competent.

Q. The books appeared to have been regularly and methodically kept up to about the 12th of September ; that was the appearance to me as an accountant accustomed to the examination of books ; I found entries after the 12th of September, 1878,  
20 which seemed to be what accountants term closing entries, to some degree, and also some entries relating to the current transactions ; the entries in the account of the transactions subsequent to the first of October seem to me to be altogether lacking in order and method ; they were apparently simply memoranda, meant to be afterwards put into a different shape for permanent record.

Q. Did you make an examination to ascertain whether there was any inventory of the property of  
30 the company, or the property that belonged to the company, at or about the time of the sale by the sheriff—by the constable ?

A. I made search among the papers which came into my hands with a view to find an inventory which I have been informed had been made about that date in September, but was unable to find any inventory having a date to identify it as made at that date.

Q. Do you find in that book there any inventory ?

40 A. I do.

By the COURT :

Q. What book ?

A. This book marked cash on the back ; I found on that book, commencing on page 180, an inventory in detail ; it is without date, and extending to and including page 193, both inclusive.

*Further direct :*

Q. Is it in pencil or ink ?

A. It is in pencil. 10

Q. It appears to be in the same handwriting as the other entries of the transactions subsequent to the 20th of September ?

Q. The writing appears to me to be the same.

By Mr. WHITEHEAD :

Q. The handwriting is the same as what ?

A. As the other entries in this book of the transactions subsequent to the 20th September. 20

*Further direct :*

Q. Can you state, Mr. Miller, about the amount that you have received or collected from the book accounts and bills receivable ?

A. I could not state with any precision without reference to my books.

Q. What do you find to be the situation of the accounts, so far as bills receivable were concerned, as to the entries on the books, whether they had been collected, or whether they had been properly charged as paid ? 30

A. What do you mean by that, the promissory notes or open accounts ?

Q. Open accounts ?

A. There were no bills receivable came into my hands, and the bill-book indicated to me the entries in it ; that all the bills receivable on it had been disposed of prior to my appointment ; I found open accounts to a very considerable number and amount standing open on the ledger and other books, 40

and I sent to the parties appearing to be indebted, statements of account, with a demand for payment in a large number of cases, and the reply was that they had been settled, and that they held receipts from some party authorized to receive and receipt for the money ; and I became satisfied, from inquiries made and from the number of replies of that kind that came to me, that these accounts had been paid ; while in many instances there were  
 10 sent to me copies of the receipts, and statements of the names of the parties who had signed the receipts, and they were so clear that I became satisfied that the collections had been made by various persons, and that the credits had not been properly made on the books, and accounts appearing due were not due, but had been settled.

Q. By whom had the accounts been settled ? As to any one particular account, can you tell by whom the amount had been received ?

20 A. I can tell what the statements of the parties were. Had it been a single instance I should have required the party to produce the receipt ; but there were so many, and some at remote distances, that I did not think it necessary to put them to the trouble of producing their receipts. There were, perhaps, ten, twenty, thirty or forty respectable dealers all stating these facts, and giving me the dates, names and amounts when the payments had been made, and it seemed to me to show clearly that they had been  
 30 made, and therefore I did not feel called upon to require them to produce the receipts that they alleged they held.

Q. Do you remember one account against, I think, a man by the name of Meyer ?

A. There was an account on the books against one Julius Meyer, of New Orleans.

Q. Did you ever see any papers by which you could testify as to who received the money on that account ?

40 (Objected to.)

Q. I call your attention to a note payable in January, 1878. Is there an entry of a note payable in January, 1878.

A. There is.

Q. Will you see what notes appear there?

A. This is the bill book. There is a note drawn by the H. C. Burnet Manufacturing Company, endorsed H. C. B.—E. E. C., in favor of Mechanics' Bank, dated October 6th, at three months.

By MR. WHITEHEAD: Q. What year is that? 10

A. It is not dated, but it is due the 9th of January, 1878, for \$2,586.36, and in the margin there is an entry, paid cash and a new note to O. L. B., I think it is; the next is a note in all respects the same except the amount—no, it is not the same; the marginal note differs, the amount being \$1,879.51, and the marginal note is with ditto marks under the words "paid cash and a new note," and then the letters C. H., and V. W. The third note is the same except in the amount and the marginal note, 20 the amount being \$530.81, and the marginal note, ditto marks under the words "paid cash and a new note," and then the letters J. W. P. They are all due the 9th January, 1878.

*Further Direct:*

Q. Now do you find any other record of the same notes on any other part of the book?

Q. In the entries for the month of June, 1878, I 30 find three notes each dated April 12th at 60 days.

By MR. WHITEHEAD:

Q. Does it say the year?

A. That is not indicated except by the date it matured; the drawers were The H. C. Burnet Manufacturing Company to the order of H. C. B., treasurer endorsed—This is under the head "in favor of," endorsed by H. C. B., and E. E. C., and then ditto marks under the word bank, and then O. L. B.; it 40

is due the 14th June, 1878. The amount is \$1,950, and the marginal entry is, paid by a new note. The second is like unto it except that the letters C. H. and V. W. followed the names of the endorsers, and that the amount is \$1,400; and the third one differs in that the letters J. H. P. follow the name of the endorser.

*Further direct :*

10 Q. Do you find any further entry of those notes on the bill books, and if so what part of it?

A. The entries in the month of September, the bills payable in 1878, I find under date of June 14th at three months. These notes, they appear to be drawn by the H. C. Burnet Manufacturing Company to the order of H. C. B., treasurer; endorsed by H. C. B. and E. E. C., in favor of the Mechanics' Bank, due the 17th, for the amount of \$1,950; the marginal note under the head of remarks is O. L. B.

20 Q. Do you find any other note on that page?

A. There is another of the same date and tenor of \$1,400, with the marginal note C. H. and V. W.; there is a third note of the same date and tenor for \$440, with the marginal note J. W. P.

Q. Do you find another note on that page for \$245 or something like that?

A. I find a note there under date of June 7th at three months, which follows the previous one; it is drawn by the H. C. Burnet Manufacturing Company  
30 to the order of W. S. Squier in favor of the Mechanics' Bank, maturing September 10th, 1878, for \$256.81.

By Mr. WHITEHEAD :

Q. Matured what date?

A. September 10th, 1878.

*Further direct :*

Q. That is a note given by the company to Squier?

40 A. It is a note given by the company to the order

of W. S. Squier, or endorsed by him in favor of the Mechanics Bank, that is the way it is entered on this book; I ought not to say the Mechanics Bank, it may be M. E. C., or it may be M. E. R; I am a little hasty there.

Q. What does that abbreviation mean to you?

A. It would indicate to me as an accountant; is that the answer you want?

Q. Yes.

Q. That it was a note of the H. C. Burnet Manu- 10  
facturing Company, drawn to the order of Mr. Squier and passed to the Merchants' or Mechanics' Bank, as the same may indicate; that they were the holders, and that it was endorsed by Mr. Squier.

Q. Did quite a number of books relating to the company come into your hands?

A. Yes, sir.

Q. I understand you to say that this book marked "Cash Book," contains, so far as you have been 20  
able to ascertain, all the records of the business from the 11th of September, to the time you took possession of the property?

A. With the exception of such entries as between that date and the 30th were made in the cash book.

MR. WHITEHEAD: I would like counsel to inform us what parts of these books he desires to read or will use in this evidence? 30

MR. CONDIT: We propose to use the bill book, and this book, and the cash book.

MR. WHITEHEAD: What parts do you want to use?

MR. CONDIT: The parts we called the attention of the witness to, between the 11th September and the time when the books came into the hands of the receiver. 40

MR. WHITEHEAD : Well, let me understand distinctly what parts you propose to offer ?

MR. CONDIT : We propose to offer the whole book, as showing the manner of keeping the business, and these loose sheets too.

Q. You found these in the books, these loose memoranda ?

10 A. I don't know about that ; it is possible I placed them there myself ; they were in the inventory book.

MR. CONDIT : Then we offer it simply for the purpose of showing how the business was conducted, and this (referring to another book) as showing the business of the company from September 11th until such time as Mr. Miller took possession of the company.

20

Q. That is part of it, is it not ; you can refer to pages and sheets if they desire it, there are some pages relating to back transactions ?

A. They are here.

Q. And that we don't know anything about ?

A. But these loose sheets you want.

30

MR. WHITEHEAD : I object to the introduction of the books as far as Mr. Squier is concerned, or so far as they can be offered as evidence against him, or so far as the testimony goes against the company in any matter in which the company can be involved in this case. I can't object to them on behalf of the company, because they are the company's books.

40

MR. SILAS WHITEHEAD : We have not offered them yet.

Mr. CONDIT: We refer to the inventory and bill book so far as they appear of the business between September 11th, and the time the Receiver took possession.

Mr. JOHN WHITEHEAD: Then there is no question raised on our part if the books are not offered.

Mr. LILLY: I have none to raise at this stage of the case. 10

*Cross-examination* by Mr. JOHN WHITEHEAD:

Q. What other books came into your possession?

A. There were a considerable number of books; there were old books which apparently were in disuse, and some other books in current use; I could not state them accurately without producing my inventory; they are at my office.

20

Q. Will you produce them?

A. If there is a messenger here I can send for them; they are bulky.

Q. Larger than those you have here?

A. I don't know about that.

By the COURT: It is not necessary that the books should be produced here; they are in the hands of the receiver, and open to inspection to counsel at all times; you can go to Mr. Miller's office at recess or after the adjournment this afternoon, and make such examination as you think proper. 30

Q. Was not there a book given you by Mr. Parker, showing the amount that were due, and different items due?

A. A book of accounts?

Q. Yes.

A. None, unless you refer to what is termed the book of balances; I don't remember any other. 40

Q. Was there any memorandum given you by Mr. Parker, showing what was due on bills receivable or book account ?

A. None whatever.

Q. How did you ascertain what was due ?

A. By examination of the book.

By Mr. WHITEHEAD : I shall want to ask Mr. Miller some more questions before the case closes.

10 By the COURT : Cannot you do it now ?

Q. You sold the property of the company, did not you ?

A. I sold the property that came into my possession.

Q. What came into your possession ?

A. The stock of material, tools, fixtures and implements contained in the factory.

Q. How did you sell it, -sir ?

20 A. By auction, nearly all of it ; a small portion sold at private sale.

Q. What was realized by that private sale ?

A. I am speaking from memory ; it was something under \$100 ; my recollection is it was \$80.

Q. Did you attempt to sell at private sale the whole property ?

30 A. I endeavored to obtain an offer for the whole property by private contract, but did not succeed in obtaining any offer, at which, under the circumstances, I thought judicious to accept it.

Q. Did you get an offer ?

A. I had no distinct offer.

Q. You sold by public vendue ?

A. I did.

Q. How much notice did you give ?

A. About a week's notice, I should think.

Q. How ?

A. By advertising in the newspapers.

40 Q. Did you send round notices of sale to the parties interested ?

A. My impression is—well, I can only answer in this way, that I took pains to give publicity to it, and I think I sent copies of the catalogue to persons in the trade, but I can't say *positively* at this moment.

Q. (Holding up a paper.) Is this a catalogue, Sheriff?

A. That is a copy of the catalogue that was used at the sale, and by which I sold, with some slight modification; *that* contained some things which by 10  
direction of the Court, subsequently made, I was directed not to sell.

Q. Can you specify here what those things were?

A. No, I don't think I can; I could not specify it here, but I can by reference to my papers at my office.

Q. What was the amount that these goods brought, Sheriff, at the sale?

A. I can't tell with accuracy without reference to my record. 20

Q. You have the means of telling?

A. Yes, sir; precisely.

Q. Well, how much, as near as you can remember?

A. In the neighborhood of between \$1,400 and \$1,500; that is my recollection.

Q. Did that catalogue of goods contain anything else besides what came into your hands as the property of the H. C. Burnet Manufacturing Com-  
pany? 30.

A. It did not contain a thing except that which I took into my possession under the order of the Court as the property of the H. C. Burnet Manufacturing Company.

BY THE COURT: Does not this all appear by the record?

BY MR. WHITEHEAD: I don't know; I am glad to know it is so; it will save me some trouble. 40

BY WITNESS—Some property was reserved, and subsequently was taken away by Mr. Squier.

10 BY THE COURT: The property purchased with the money collected upon the books was sold, but there was certain property withdrawn from the sale by order of the Court, and my present recollection is that there was such a written order made.

BY JOHN LILLY, Esq.: I have a copy of it.

BY MR. CONDIT: It was property Mr. Squier claimed was bought with his money exclusively.

Q. Was all the property turned over to Mr. Squier which by the order of the Court you were directed so to do?

20 A. No; my recollection is, there were two lots of sealing wax which the order directed me to turn over to Mr. Squier, which had been previously sold by private sale under the order of the Court.

Q. What proportion of the value did the property which you turned over to Mr. Squier bear to the property you sold by auction?

A. I could not tell without reference to my inventory.

Q. Well, generally?

30 A. I could not tell about that; the inventory was a valuation as well.

BY JOHN LILLY, Esq.: Q. Have you ever paid Mr. Squier the balance for those goods?

A. What goods do you refer to?

Q. The Court ordered you to hand over to him certain goods; you say that certain goods were not there; now, did you ever pay him the money you got for them?

40 A. No, sir.

BY MR. WHITEHEAD. Q. Does it appear anywhere in the inventory which has been shown you, what the date of it is?

A. There is nothing to indicate it.

Q. Do you know in whose handwriting it is?

A. I do not.

Q. From whom did you get those books personally—what person handed them to you?

A. They were in the custody of Mr. Parker.

Q. His first name?

10

A. James H. Parker, who was the Secretary of the company; I took them from the office where I found them in his custody.

Q. Where is he now?

A. He is dead, sir.

Q. Where was he living at the time?

A. He had a room in the building, and slept there.

Q. A single man?

A. So far as I know.

20

Q. How long after this did he die?

A. He died in April of last year.

Q. And you took possession in January?

A. Yes, sir; that is my recollection.

Q. You did not keep personal possession yourself of these goods?

A. No, sir; I had my keeper there.

Q. Who was your keeper?

A. Mr. Beach.

Q. First name?

30

A. William G.

Q. Is he in Court?

A. He is in Court; he was there part of the period; subsequently his brother was in charge.

Q. Did you have anybody else besides Mr. Beach?

A. There was another there to assist him, and a night-watchman.

Q. What was his name?

A. John something-or-other; John Burn.

40

Q. Was not Mr. Parker the keeper in the night ?

A. No, sir.

Q. That's all.

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IN CHANCERY OF NEW JERSEY.

10

MECHANICS' BANK

v.

THE H. C. BURNETT MANUFACTURING COMPANY.

OSCAR L. BALDWIN, a witness called and sworn on behalf of the complainant in rebuttal, testified as follows :

20

*Direct-examination :*

By MR. CONDIT: Q. You are the cashier of the Mechanics' Bank ?

A. I am, sir.

Q. Judgment was obtained by the Mechanics' Bank against the H. C. Burnet Manufacturing Company on certain notes held by the Bank ; will you state the circumstances under which those notes were given to the Bank, as you recollect it ?

30

A. Those notes were renewals of notes originally given to the Bank by H. C. Burnet for the purchase of the property of the Company, that was held by the Company.

Q. The property was originally sold to whom ?

A. Halstead C. Burnet.

Q. Why were the notes of Halstead C. Burnett renewed ?

40

A. The notes were originally given, and there was an agreement that they would be renewed for a year ; renewed three times, four months notes, I

think, or three months notes that should be renewed four times; I forget which.

Q. When those notes, by the agreement, should have been paid, were they paid?

A. I think two-thirds or three-fourths were paid.

Q. As to the balance of the notes that were not paid at the expiration of the agreement?

A. At the time the notes came due Mr. Burnet said he was not able to meet them, and asked to have them renewed; the time then had expired, 10 and I told him they could only be renewed on a change of notes; that the contract had been carried out so far, and he wanted to make a new contract now; that the property had been sold, and if he would give us notes of the Burnet Manufacturing Company, endorsed by himself and Mr. Coe, who was the principal stockholder of the Company, we would give him further time; otherwise, they would have to be paid at once.

Q. You put it upon that ground, did you? 20

A. Entirely so, sir.

Q. After you said that to Mr. Burnet what happened?

A. He said he would see if he could do it; he went out, and in a few minutes came in with the notes.

Q. When those notes came due, were they paid?

A. They were renewed again, sir.

Q. And renewed the second time?

A. I think they were—that they were renewed 30 the third time—that is renewed the second time.

*Cross-examination:*

Q. Did you make any inquiry of Mr. Burnet as to whether the company authorized him to make the notes?

A. I did not, sir.

Q. You knew Mr. Squier?

A. I did, sir.

Q. Mr. Squier was a dealer in your bank? 40

A. Yes, sir.

Q. Up to what time?

A. I cannot tell, sir; I guess he was at that time.

Q. Up to what time?

A. I could not tell you, sir.

THE VICE CHANCELLOR: This is not cross-examination, or anything inquired into on the examination in chief.

10 By Mr. LILLY: Q. I meant to ask this one question: Mr. Baldwin, you received a letter from Mr. Squier in November, 1878, did you not?

The VICE CHANCELLOR: (To Mr. Lilly) Your case is rested and this is not cross-examination.

By Mr. WHITEHEAD: Q. (Handing witness papers purporting to be receipts, signed by Joseph Hanson, O. L. Baldwin, and J. W. Plume, dated  
20 December 27th, 1876); did you ever see those receipts?

A. I think that is my signature; the other ones I do not recollect.

Q. Those receipts were given at the time the notes of H. C. Burnet were given?

A. Given at the time of the date I presume, sir; I have no recollection of them.

Q. I only want to know whether those receipts were given at the time the original notes of Mr. Burnet were first given?

30 A. I have no doubt, sir, they were given at the time they are dated.

Q. They are dated December 27th, 1876?

A. That is about the time they were signed?

(Defendant's counsel offered said receipts in evidence.)

By Mr. LILLY: Q. I understood you to say there were no payments made on the notes given by the  
40 H. C. Burnet Manuf'g Co.?

A. I did not say so.

Q. Was there any payments made on them?

A. I think so; I do not recollect.

Q. What was the amount?

A. I have not refreshed my memory at all.

The VICE CHANCELLOR: The testimony of Mr. Burnet stands uncontradicted on that point.

I certify and report that the foregoing is a true report of the oral evidence taken before me on the hearing of the foregoing stated cause. 10

Dated July 26th, 1881.

A. B. VAN FLEET,  
V. C.

20

30

40

**Complainant's Exhibits.**

No. 1.

NEW JERSEY SUPREME COURT.

THE MECHANICS' NATIONAL BANK  
AT NEWARK

vs.

THE H. C. BURNET MANUFACTURING  
COMPANY and HALSTED C. BUR-  
NET.

In Case.  
By Default, &c.  
Whitehead and  
Condit,  
Attorneys.

10

20

As yet of the twenty-eighth day  
of September, A. D. eighteen hun-  
dred and seventy-eight.

Witness:

MERCER BEASLEY, ESQUIRE,  
Chief Justice.

BENJ. F. LEE,  
Clerk.

ESSEX COUNTY, ss.:

The H. C. Burnet Manufacturing Company, Hal-  
sted C. Burnet, the defendants in this suit, were  
summoned to answer The Mechanics' National Bank  
at Newark, the plaintiffs therein, of a plea of tres-  
pass on the case upon promises; and thereupon the  
plaintiffs, by Whitehead & Condit, their attorneys,  
complain:

For that whereas, the defendants heretofore, to  
wit, on the eighteenth day of September, in the  
year of our Lord one thousand eight hundred and  
seventy-eight, at Newark, in the county of Essex,  
were indebted to the plaintiffs in the sum of eight  
thousand dollars, for goods, wares and merchandise  
before that time sold and delivered by the plaintiffs  
to the defendants, at their request, and in eight

thousand dollars for work and labor before that time done and performed, and materials furnished by the plaintiffs for the defendants, at their request ; and in eight thousand dollars for so much money by the plaintiffs, before that time, lent and advanced to the defendants, at their request ; and in eight thousand dollars for so much money by the plaintiffs before that time paid for the use of the defendants, at their request ; and in eight thousand dollars for so much money by the defendants 10 before that time had and received for the use of the plaintiffs ; and in eight thousand dollars for interest upon and for the forbearance by the plaintiffs to the defendants, at their request, of divers large sums of money before that time due and owing from the defendants to the plaintiffs ; and in eight thousand dollars for so much money then and there found to be due from the defendants to the plaintiffs on an account stated between them ; and being so indebted, the defendant, in consideration there- 20 of, then and there promised the plaintiffs to pay them the said several sums of money on request. Yet the defendants have disregarded their said several promises and have not paid the said several sums of money, nor any of them, nor any part thereof, although often requested so to do, but to do so have hitherto wholly refused, and still do refuse, to the damage of the plaintiffs eight thousand dollars, and therefore they bring their suit, &c.

30

Notice is hereby given that this action is brought to recover the amount due on three promissory notes, of which the following are true copies :

\$1950.

NEWARK, N. J., June 14, 1878.

Three months after date we promise to pay to the order of H. C. Burnet, Treasurer, Nineteen Hundred 40

and Fifty Dollars, at the Mechanics' National Bank,  
Newark, N. J. Value received.

THE H. C. BURNET MANUFACTURING CO.

(Signed.)	H. C. BURNET, Treas.
(Endorsed.)	H. C. BURNET, Treas.
"	HALSTED C. BURNET.
"	ERNEST E. COE.

10 Protest fees, \$1.56.

\$1400. NEWARK, N. J., June 14, 1878.

Three months after date we promise to pay to the  
order of H. C. Burnet, Treasurer, Fourteen Hun-  
dred dollars, at the Mechanics' National Bank,  
Newark, N. J. Value received.

THE H. C. BURNET MANUFACTURING CO.

20 (Signed.)	H. C. BURNET, Treas.
(Endorsed.)	H. C. BURNET, Treas.
"	HALSTED C. BURNET.
"	ERNEST E. COE.
"	CONDIT, HANSON & VAN WINKLE.

Protest fees, \$1.58.

\$440. NEWARK, N. J., June 14, 1878.

30 Three months after date we promise to pay to the  
order of H. C. Burnet, Treasurer, Four Hundred  
and Forty Dollars, at the Mechanics' National  
Bank, Newark, N. J. Value received.

THE H. C. BURNET MANUFACTURING CO.

(Signed.)	H. C. BURNET, Treas.
(Endorsed.)	H. C. BURNET, Treas.
"	HALSTED C. BURNET.
"	ERNEST E. COE.

40 Protest fees, \$1.56.

And now at this day, to wit, the twenty-ninth day of October, A. D. eighteen hundred and seventy-eight, before the Supreme Court of the State of New Jersey, at Trenton, came the said plaintiffs, by their attorneys aforesaid, and the defendants, though solemnly called, came not, but make default; and hereupon the plaintiffs pray judgment and their damages by reason of the premises in their declaration mentioned, to be assessed and adjudged to them; and the same having been duly 10 assessed at three thousand eight hundred and twenty-five dollars and sixty-one cents, besides thirty-eight dollars and eighty-four cents costs and charges in this behalf expended,

Therefore it is considered, that the said plaintiffs do recover against the said defendants their said damages in form aforesaid, assessed to three thousand eight hundred and twenty-five dollars and sixty-one cents, and also thirty-eight dollars and eighty-four cents costs and charges aforesaid, by 20 the Court now here adjudged to the said plaintiffs and with their assent, which said damages, costs and charges, in the whole, amount to three thousand eight hundred and sixty-four dollars and forty-five cents.

Judgment signed this twenty-ninth day of October, A. D. eighteen hundred and seventy-eight.

M. BEASLEY,  
Ch. Jus.

I, BENJ. F. LEE, Clerk of the Supreme Court of 30 the State of New Jersey, do certify that the foregoing is a true copy of the judgment in above stated cause, as the same remains of record in my office.

In testimony whereof I have hereto set  
my hand and the seal of said  
[L. S.] Court, at Trenton, this fourth day  
of November, A. D. eighteen hundred  
and seventy-nine.

BENJ. F. LEE,

Clerk. 40

- No. 2. Cash book of H. C. Burnet Man'g Co.  
 " 3. Ledger " " "  
 " 4. Bill " " "  
 " 5. Cash " Containing inventory of property  
 of said Company.  
 " 6. Loose sheets belonging to last mentioned  
 book.  
 " 7. Receiving book.  
 " 8. "  
 10 " 9. Assignment of Accounts by H. C. Burnet  
 Man'g Co. to Wm. S. Squier, dated Sept.  
 18, '78.  
 " 10. " " "  
 Nov. 1, 1878.  
 " 11. " " "

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**Defendant's Exhibits.**

20

## EXHIBIT A.

Know all Men by these Presents, that I, Patrick C. Smith, of the City of Newark, in the County of Essex and State of New Jersey, one of the Constables in and for said County of Essex of the First Part, for and in consideration of the sum of eleven hundred and fifty dollars, lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents, by William S. Squier of the same City, County and State, of the

30 Second Part, the receipt whereof is hereby acknowledged, have bargained, and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators, and assigns, all the goods and chattels particularly described and mentioned in the schedule on the second page of this bill of sale. The said goods and chattels are sold by virtue of six executions issued out of the First District Court of the said

40 City of Newark, under the hand and seal of George

K. Coleman, clerk of said Court, in which six suits William S. Squier was the plaintiff and "The H. C. Burnet Manufacturing Company" were the defendants: To Have and to Hold the same unto the said party of the second part, his executors, administrators, and assigns, forever. And I do for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the sale of the said goods and chattels hereby sold unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever. 10

In Witness Whereof, I have hereunto set my hand and seal the eleventh day of September, in the year of Our Lord One Thousand Eight Hundred and Seventy Eight.

P. C. SMITH,  
Constable. 20

Sealed and Delivered in }  
the presence of }  
SAMUEL HAUSER.

SCHEDULE REFERRED TO ON THE FIRST PAGE.

One Iron safe, two writing desks,  
Five cane-seat chairs, one letterpress,  
Two lamps, lot of sealing wax, &c.,  
About 162 gross of inks, fluids and mucilage,  
Lot of shellac, rosin, &c., 30  
Lot of empty mucilage and ink bottles,  
Lot of corks and wood stoppers, &c.,  
Seal cutters and seal paper,  
Lot of wrapping paper,  
Five wood tanks, containing inks,  
Mucilage fluids, &c.,  
One ink pump and hose,  
Three platform scales,  
Lot of empty barrels, pails, &c.,  
Twenty-eight wax moulds, 40

- Three wax furnaces,  
 Four copper kettles,  
 One copper kettle set in brick,  
 Two iron caldrons, lot of empty packing boxes,  
 Six stoves and fixtures, lot of stencils,  
 Lot of wax dies, two marble slabs,  
 Two stone slabs, &c., and lot of polishing irons,  
 And polishing slabs, lot of stone bottles in yard,  
 Lot of mucilage brushes and handles, wood caps,  
 10 Lot of corks, &c., and all the goods and chattels  
 now on the premises known and designated as the  
 H. C. Burnet Manufacturing Company, Numbers  
 60, 62, & 64 River Street, in the City of Newark,  
 N. J.

---

 EXHIBIT B.

OFFICE OF

- 20 R. B. DOVELL'S SON,  
 Manufacturer of  
 Writing Inks, Fluids, Mucilage, Sealing Wax, &c.  
 131 WILLIAM ST.  
 NEW YORK, Nov. 8th, 1878.

FRIEND OSCAR :

- I am surprised to learn that you have said to  
*several parties* that my purchase of the Burnet  
 Mf'g Co. *was a put up job* (or an arrangement) be-  
 30 tween Burnet and myself. I want to disabuse your  
 mind of any such impression, and have you distinctly  
 understand, that such is not the case.

I had been unable to see Burnet for six weeks before the purchase, as he had not been to the Factory that I could find.

- I purchased the the thing at execution and public  
 sale, to save myself from loss, as there were  
 other *executions out against them*, and the Constable  
 was in *actual* possession, which previous execu-  
 40 tions I had to pay before commencing my suite.

I now say to you, that if you are anxious to step into my shoes and pay off what I have had to put in and &c., I shall be very willing to have you do so.

I have advanced in money and goods in the business, to carry it on, from \$3000 to \$3500, and as far as I can make out, there is from \$4000 to \$4500 of Stock, Tools and Fixtures on hand (of actual stock manf'd and unmanf'd, independent of Tools and Fixtures) which I do not think are worth anything, 10  
there is about \$2500 worth, and of this sum \$600 or \$800 seem to be old Dovell stock worth—what?

To save myself, as it looks now, I shall have to run this business for a year before I can get out whole, and will say to you if I had known that I would have to give the time to the business that I have been compelled to do, I would have let my claim go, as it is entirely new business to me, and I am trying to learn it as my money is in it.

If you are anxious to purchase, let me know at 20  
once as I am willing to sell and will give you all the information that I can, which has cost me a good deal of time and money.

Awaiting your reply,

Yours truly,

WM. S. SQUIER.

N. B.—The Co. inventory which they have *been*  
*carrying along*, foot up more. 30

You have a note of *mine* due last July for over \$500, and attached to it was a note of S. Dunn for \$545.25. I would like both of these notes, as you have them in your possession. Where are they?

The one of about \$900—want you to hold as I told you.

## EXHIBIT C—1.

\$1,150.

NEWARK, N. J., December 27th, 1876.

Three months after date I promise to pay to the order of myself eleven hundred and fifty dollars  $\frac{00}{100}$  dollars, at the Mechanics' National Bank, Newark, N. J. Value received.

Halsted C. Burnet.

10 Due March 30, 1877.

No.

Endorsed—Halsted C. Burnet. Cashier ac.

## EXHIBIT C—2.

\$3,724  $\frac{61}{100}$ .

NEWARK, N. J., December 27, 1876.

Three months after date I promise to pay to the order of myself thirty seven hundred and twenty-four  $\frac{61}{100}$  dollars at the Mechanics' National Bank, Newark, N. J. Value received.

Halsted C. Burnet.

Due March 30, 1877.

No.

Endorsed—Halsted C. Burnet ; Condit, Hanson &amp; Van Winkle.

## EXHIBIT C—3.

30

\$5,125  $\frac{39}{100}$ .

NEWARK, N. J., December 27, 1876.

Three months after date I promise to pay to the order of myself five thousand one hundred and twenty-five  $\frac{39}{100}$  dollars at the Mechanics' National Bank, Newark, N. J. Value received.

Halsted C. Burnet.

Due March 30, 1877.

No.

40 Endorsed—Halsted C. Burnet.

## EXHIBIT C—4.

\$2,500.

NEWARK, N. J., December 27, 1876.

Twenty four days after date I promise to pay to the order of myself twenty five hundred dollars  $\frac{100}{100}$  dollars at the Mechanics' National Bank, Newark, N. J. Value received.

Halsted C. Burnet.

Due January 23, 1877.

10

No.

Endorsed—Halsted C. Burnet.

## EXHIBIT D—1.

\$862  $\frac{50}{100}$ .

NEWARK, N. J., March 30, 1877.

Three months after date I promise to pay to the order of myself eight hundred and sixty-two  $\frac{50}{100}$  dollars at the Mechanics' National Bank, Newark, N. J. Value received.

20

Halsted C. Burnet.

Due July 3, 1877.

No.

Endorsed—Halsted C. Burnet. Cashier ac.

## EXHIBIT D—2.

\$2,793  $\frac{46}{100}$ .

30

NEWARK, N. J., March 30, 1877.

Three months after date I promise to pay to the order of myself twenty-seven hundred and ninety-three  $\frac{46}{100}$  dollars at the Mechanics' National Bank, Newark, N. J. Value received.

Halsted C. Burnet.

Due July 3, 1877.

No.

Endorsed—Halsted C. Burnet; Condit, Hanson & Van Winkle.

40

## EXHIBIT D—3.

\$3,844 $\frac{04}{100}$ .

NEWARK, N. J., March 30, 1877.

Three months after date I promise to pay to the order of myself thirty-eight hundred and forty-four  $\frac{04}{100}$  dollars at the Mechanics' National Bank, Newark, N. J. Value received.

Halsted C. Burnet.

- 10 Due Jany. 3, 1877.  
No.  
Endorsed—Halsted C. Burnet.

## EXHIBIT E—1.

\$2,562 $\frac{69}{100}$ .

NEWARK, N. J., July 3d, 1877.

- 20 Three months after date I promise to pay to the order of myself twenty-five hundred and sixty-two  $\frac{69}{100}$  dollars at the Mechanics' National Bank. Value received.

Halsted C. Burnet.

Due Oct. 6, 1877.

No.

Endorsed—Halsted C. Burnet.

## EXHIBIT E—2.

- 30 \$1,862 $\frac{31}{100}$ .

NEWARK, N. J. July 3d, 1877.

Three months after date I promise to pay to the order of myself eighteen hundred and sixty-two  $\frac{31}{100}$  dollars at the Mechanics' National Bank. Value received.

Halsted C. Burnet.

Due Oct. 6, 1877.

No.

- 40 Endorsed—Halsted C. Burnet; Condit, Hanson & Van Winkle.

## EXHIBIT E—3.

\$575 Dolls.

NEWARK, N. J., July 3d, 1877.

Three months after date I promise to pay to the order of myself five hundred and seventy-five  $\frac{00}{100}$  dollars at the Mechanics' National Bank. Value received.

Halsted C. Burnet.

Due Oct. 6, 1877.

No.

10

Endorsed—Halsted C. Burnet.

## EXHIBIT F—1.

\$580  $\frac{31}{100}$ .

NEWARK, N. J., October 6, 1877.

Three months after date we promise to pay to the order of Halsted C. Burnet, five hundred and eighty  $\frac{31}{100}$  dollars at the Mechanics' National Bank. Value received.

20

The H. C. Burnet Manufacturing Co.

H. C. Burnet, Treas.

Due Jan. 9, 1878.

No.

Endorsed—Halsted C. Burnet.

## EXHIBIT F—2.

\$1,879  $\frac{51}{100}$ .

NEWARK, N. J., October 6, 1877. 30

Three months after date we promise to pay to the order of Halsted C. Burnet eighteen hundred and seventy-nine  $\frac{51}{100}$  dollars at the Mechanics' National Bank. Value received.

The H. C. Burnet Manufacturing Co.,

H. C. Burnet, Treas.

Due Jan. 9, 1878.

No.

Endorsed—Halsted C. Burnet; Condit, Hanson & Van Winkle.

40

## EXHIBIT F—3.

\$2,586 $\frac{36}{100}$ .

NEWARK, N. J., October 6th, 1877.

Three months after date we promise to pay to the order of Halsted C. Burnet twenty-five hundred and eighty six  $\frac{36}{100}$  dollars at the Mechanics' National Bank. Value received.

The H. C. Burnet Manufacturing Co.,

H. C. Burnet, Treas.

10 Due Jan. 9, 1878.

No.

Endorsed—Halsted C. Burnet.

## EXHIBIT G—1.

Dolls. 443 $\frac{10}{100}$ .

NEWARK, N. J., January 9th, 1878.

20 Three months after date we promise to pay to the order of J. W. Plume, Cashier, four hundred and forty-three  $\frac{10}{100}$  dollars at the Mechanics' National Bank. Value received.

The H. C. Burnet Manufacturing Co.,

H. C. Burnet, Treas.

Due April 12, 1878.

No.

Endorsed—Halsted C. Burnet.

## EXHIBIT G—2.

Dolls. 1,435 $\frac{14}{100}$ .

30 NEWARK, N. J., Jany. 9, 1878.

Three months after date we promise to pay to the order of H. C. Burnet, Treas., fourteen hundred and thirty-five  $\frac{14}{100}$  dollars at the Mechanics' National Bank. Value received.

The H. C. Burnet Manufacturing Co.,

H. C. Burnet, Treas.

Due April 12, 1878.

No.

Endorsed—H. C. Burnet, Treas.; Halsted C. Bur-

40 net.

## EXHIBIT G—3.

Dolls. 1,974 $\frac{85}{100}$ .

NEWARK, N. J., Jany. 9, 1878.

Three months after date we promise to pay to the order of H. C. Burnet, Treas., nineteen hundred and seventy-four  $\frac{85}{100}$  dollars at the Mechanics' National Bank. Value received.

The H. C. Burnet Manufacturing Co.,  
H. C. Burnet, Treas.

Due April 12, 1878. 10

No.

Endorsed—H. C. Burnet, Treas.; Halsted C. Burnet.

## EXHIBIT H—1.

Dolls. 440.

NEWARK, N. J., April 12th, 1878.

Sixty days after date we promise to pay to the order of H. C. Burnet, Treasurer, four hundred and forty dollars at Mechanics' Bank, Newark, N. J. 20  
Value received.

The H. C. Burnet Manufacturing Co.  
H. C. Burnet, Treas.

Due June 14, 1878.

No.

Endorsed—H. C. Burnet, Treas.; Halsted C. Burnet.

## EXHIBIT H—2.

Dolls. 1,400.

NEWARK, N. J., April 12th, 1878. 30

Sixty days after date we promise to pay to the order of H. C. Burnet, Treasurer, fourteen hundred dollars at Mechanics' Bank, Newark, N. J.  
Value received.

The H. C. Burnet Manufacturing Co.  
H. C. Burnet, Treas.

Due June 14, 1878.

No.

Endorsed—H. C. Burnet, Treas.; Halsted C. Burnet; Condit, Hanson & Van Winkle. 40

## EXHIBIT H—3.

Dolls. 1,950.

NEWARK, N. J., April 12th, 1878.

Sixty days after date we promise to pay to the order of H. C. Burnet, Treasurer, nineteen hundred and fifty dollars at Mechanics' Bank, Newark, N. J. Value received.

The H. C. Burnet Manufacturing Co.,

H. C. Burnet, Treas.

10 Due June 14, 1878.

No.

Endorsed—H. C. Burnet, Treas.; Halsted C. Burnet.

## EXHIBIT I.

20

Know all men by these presents, that I, JAMES M. TRIMBLE, of the City of Newark, in the County of Essex and State of New Jersey of the first part, for and in consideration of the sum of twelve thousand five hundred dollars lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents by the H. C. Burnet Manufacturing Company of the City of Newark, in the County of Essex and State of New

30

Jersey of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said parties of the second part, their successors, and assigns, all the goods and chattels, particularly described and mentioned in the annexed schedule, now in the building and on the premises known as Nos. 88 McWhorter street, in the City of Newark, N. J. Being the same property conveyed to me by Halsted C. Burnet by bill of sale dated January 20, 1877.

40

To have and to hold, the same unto the said party

of the second part, their successors, and assigns forever.

In witness whereof, I have hereunto set my hand and seal, the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

JAMES M. TRIMBLE. [SEAL.]

Sealed and delivered }  
in the presence of {

10

J. M. TICHENOR.

The words successors written over executors and administrators, and the covenant clause erased before execution.

#### SCHEDULE.

All the goods as described in the schedule of the bill of sale from Halstead C. Burnet to James M. Trimble, dated Jany. 20, 1877.

20

#### EXHIBIT J.

Exhibit J is annexed to answer of The H. C. Burnet Manufacturing Co., page 48.

#### EXHIBIT K.

NEWARK, December 27, 1876.

Received this day, of H. C. Burnet, his note for thirty-seven hundred and thirty-four  $\frac{61}{100}$  dollars, 30 payable in three months, in part payment of the consideration money mentioned in a contract of this date, between Messrs. Baldwin, Hanson, Plume and Condit, of the one part, and said Burnet of the second part, for the purchase of the goods, &c., at No. 88 McWhorter street, in the said city of Newark. And I hereby agree, if said Burnet shall at the maturity of said note, and at every three months hereafter, pay twenty-five per centum of the amount of said original note until the whole sum shall have 40

been paid, making the last payment become due twelve months from the date hereof, to renew and extend said note for said period, it being understood that at every such renewal said Burnet shall give a new promissory note for the amount then due, payable in three months from the date thereof, without interest.

JOSEPH HANSON.

Received note of H. C. Burnet, of this date, for  
 10 five thousand one hundred and twenty-four  $\frac{39}{100}$  dol-  
 lars, payable in three months, upon the same terms  
 and conditions set forth in foregoing receipt and  
 agreement. \$5,125  $\frac{39}{100}$ .

H. BALDWIN.

EXHIBIT L.

KNOW ALL MEN BY THESE PRESENTS, That I,  
 20 Halsted C. Burnet, of the City of Newark, in the  
 County of Essex and State of New Jersey, of the  
 first part, for and in consideration of the sum of  
 twelve thousand five hundred dollars, lawful money  
 of the United States, to me in hand paid, at or be-  
 fore the ensealing and delivery of these presents, by  
 James M. Trimble, of the same place, of the second  
 part, the receipt whereof is hereby acknowledged,  
 have bargained and sold, and by these presents do  
 grant and convey unto the said party of the second  
 30 part, his executors, administrators, and assigns,  
 all the goods and chattels particularly described  
 and mentioned in the annexed schedule now in the  
 buildings and on the premises known as No. 88  
 McWhorter street, in the City of Newark, N. J.,  
 to have and to hold the same unto the said party of  
 the second part, his executors, administrators and  
 assign forever. And I do, for myself, my heirs, ex-  
 ecutors and administrators, covenant and agree to  
 and with the said party or the second part, to war-  
 40 rant and defend the sale of the said goods and chat-

tels, hereby sold unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever.

In Witness Whereof, I have hereunto set my hand and seal the twentieth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

HALSTED C. BURNET. [SEAL.] 10

Sealed and delivered )  
in the presence of ( )  
ERNEST E. COE.

SCHEDULE.

The goods hereinbefore mentioned and referred to are the same that were sold by the Sheriff of Essex County to Albert P. Condit, September 25, 1876, on an execution against Mary Ann Dovell in a suit wherein The Manf. Nat. Bank, and als. are 20 plaintiff; also all the goods purchased by Albert P. Condit from Patrick King, Constable, sold under an execution against Mary And Dovell, and by the said Albert P. Condit sold and conveyed to the said Halsted C. Burnet, December 27, 1876.

EXHIBIT M.

THIS INDENTURE, made the twenty-fourth day of August, one thousand eight hundred and seventy-eight, between Jacob Gouch and William Gouch of the first part, and William S. Squier of the second part. 30

Whereas, the said party of the first part, on the eighth day of August, in the year one thousand eight hundred and seventy-eight, recovered a judgment in the First District Court, in and for the City of Newark, in the County of Essex and State of 40

New Jersey, against The H. C. Burnet Manufacturing Company, for the sum of one hundred and twenty-seven dollars and forty-three cents, debt and three dollars and eighty-nine cents, cost of suit, as by the record thereof will appear :

Now this Indenture witnesseth, that the said party of the first part, in consideration of one hundred and forty-six dollars and ninety-five cents to them duly paid, have sold, and by these presents do assign,  
 10 transfer and set over unto the said party of the second part, and his assigns, the said judgment and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And the said party of the first part, do hereby constitute and appoint the said party of the second part, and his assigns, their true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charge of the said party of the  
 20 second part, to ask, demand and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction, or discharge the same. And attorney one or more under him for the purpose aforesaid, to make and substitute, and, at pleasure to revoke : hereby ratifying and confirming all that their said attorney or substitute shall lawfully do in the premises. And the said party of the first part do  
 30 covenant, that there is now due on the said judgment the sum of  
 and that they will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second

part saving the said party of the first part harmless of and from any costs in the premises.

In witness whereof, the party of the first part have hereunto set their hands and seals the day and year first above written.

JACOB GOUCH. [L. s.]

WILLIAM GOUCH. [L. s.]

*J. G.*

10

Signed, sealed and delivered }  
in the presence of }

W. M. H. HAGAMAN, JR.

EXHIBIT N.

Assignment of accounts by H. C. Burnet Manufacturing Co. to W. S. Squier, Sept. 30, 1878.

THE MECHANIC'S NATIONAL BANK at  
Newark

20

*vs.*

THE H. C. BURNET MANUFACTURING COMPANY and WILLIAM S. SQUIER.

On final hearing on bill, answers and proofs taken before Vice-Chancellor. 30

MR. ALBERT P. CONDIT, for complainants.

MR. JOHN LILLY, for defendant, Squiers.

MR. JOHN WHITEHEAD, for corporate defendants.

The Vice-Chancellor :

The complainants are judgment creditors of the H. C. Burnet Manufacturing Company. Their judgment was recovered in the Supreme Court of 40

this State, October 19, 1878. The defendant, William S. Squier, was also a judgment creditor of this corporation. He had six judgments. They were entered in the First District Court of the City of Newark, on September 4, 1878. Executions were immediately issued on them, and a sale made thereunder, on the 11th day of the same month. The sale embraced all the property of the corporate defendants seizable by execution. The judgment

10 debtors were, at the time of the sale, engaged in the manufacture and sales of inks, mucilage and sealing wax, and though their property consisted of a large number of different articles, some manufactured, some in course of manufacture, and some in a raw state, some packed in boxes and some unpacked, it was all sold in one bulk. The defendant Squier purchased the whole. The complainants seek to have this sale set aside, and to hold Mr. Squier responsible for the value of the goods,

20 on the ground that he obtained his judgments and afterwards used them, not for the purpose of collecting or securing his debt, but to place the property of his debtors where it could not be reached by legal process, and thus enable them to defraud their creditors. If the case made by the bill is established by the proofs, there can be no doubt that the complainants are entitled to relief.

The defendants, however, deny that the complainants are entitled to the character they assume.

30 They say they are not judgment creditors. They urge two objections against the validity of the complainants' judgment. First, they say, the Court in which they recovered their judgment never acquired jurisdiction of the person of the corporate defendants, the summons in the action having been served on a person not authorized to receive service for the corporation; and second, they aver, that the debt on which the judgment is founded was not the debt of the corporate defendants, but of one

40 of their officers. These objections, I am of opinion,

cannot be considered here. The Court, which pronounced the judgment in question, was entirely competent to hear them, and to give adequate relief, if it found that the defendants were entitled to it.

Courts of equity sometimes give relief against judgments at law, but only where it is shown that the defendant was ignorant of the facts on which his defence rests until after the time for making defence at law had passed; or that he was prevented from making defence by the artifice or fraud of his adversary, or by accident unmixed by negligence or fraud on his part, or that his defence is a matter of pure equity cognizance. \*But in cases where the grievance he attempts to urge is one that the Court which pronounced the judgment is competent to hear and decide, and he has either urged it there unsuccessfully, or has negligently omitted to do so, this Court can give no relief. (*Reeves v. Cooper*, 1 *Beas.*, 223; *Vaughn v. Johnson*, 1 *Stock.*, 173; *Holmes v. State*, 1 *Stew.*, 173.) The precise question mooted in this case was decided in *Stratton v. Allen*, 1 *C. E. Gr.*, 229. Chancellor Green there said: "Objections which relate to the regularity of a judgment, or to the validity of the instrument upon which it is founded, constitute no ground for the interference of this Court. If the instrument upon which a judgment is entered was without consideration, or invalid, or if the judgment itself is unauthorized, or illegal, the remedy for the party aggrieved would be by application to the Court in which the judgment is entered, or by writ of error. They are questions exclusively for the cognizance of those Courts. It seems to be conclusively settled that a judgment can only be impeached in a Court of Equity "for fraud in its concoction." This Court is not at liberty, therefore, to entertain the objections interposed by the defendants.

There seems to be no proof in this case which will justify the conclusion that the judgments of the de-

fendant Squier were not founded upon a just debt. But this does not preclude an inquiry whether they were not obtained and used for a fraudulent purpose. A judgment may be founded upon an honest debt, and yet it may be obtained under such circumstances and used for such purposes as to make it a fraud. If it is recovered, not for the purpose of securing the debt, but solely to be used as a fraudulent cover, to protect the defendant's property from his other creditors, it is a fraud, and the Courts may deal with it as they would with any other fraudulent contrivance. Fraud perpetrated by means of a judgment is no more entitled to immunity than a fraud perpetrated by means of a deed or mortgage. (*Jones v. Naughtright*, 2 *Stock.*, 298.) That the forms of law have been pursued is no protection in a Court of Equity, if the result aimed at and reached is fraud. (*Metropolitan Bank v. Durand*, 7 *C. E. Gr.*, 35. S. C. on appeal, 9 *C. E. Gr.*, 556.)

10  
 20 If a judgment creditor uses his judgment for a fraudulent purpose, as against subsequent judgment creditors, he will be postponed until after they are paid. As for example, if after levy, he allows the property to remain in the possession and under the control of his debtor for such length of time and under such circumstances as to justify the conclusion that his object in obtaining it was not to secure it or collect his debt, but to protect his debtor in the enjoyment of his property, and to prevent his other creditors from seizing it for the satisfaction of their debts, his judgment and

30  
 40 levy will be declared void as to subsequent judgment creditors. *Casher v. Paterson*, 1 *South*, 317; *Williamson v. Johnson*, 7 *Hal.*, 86; *Caldwell v. Fifield*, 4 *Zab.*, 150. Fraud destroys whatever it taints, whether it be perpetrated through the machinery of the law or by other means.

The important question then is, did the defendant Squier obtain his judgments for the purpose of per-

petrating a fraud, or has he made a fraudulent use of them?

They were obtained under very extraordinary circumstances. He is a dealer in chemicals, and furnished the corporate defendants all the material they required in their business. At the time he sued, the corporation had but a single officer, at least so Mr. Squier believed. He says the Secretary was the only officer he knew or recognized, and he exercised absolute control over all the affairs of the corporation. He and the Secretary were on exceedingly intimate and friendly terms; he had been permitted for some time to store his chemicals on the premises of the defendants, and for more than a month prior to the time when he sued, he had been furnished a room in the factory of the defendants by the Secretary, where he received his mail and attended to his correspondence. His six suits were brought on the twenty-ninth day of August, 1878. He heard of the complainant's claim about this time, but he says he never thought the corporation owed them anything. When he sued his whole claim amounted to \$1163.15. Of this amount he says \$242.17 was borrowed money, and advanced in three loans; \$25 August 17; \$50 August 24; and \$167.71 on August 27. He says he paid in addition, on August 24, in the purchase of a judgment against the corporation, the sum of \$146.95. He made the purchase at the request of the Secretary, and took an assignment of the judgment. He admits he believed the corporation was solvent when he sued. The judgment purchased seems to have been the only one which, up to that time, had been recovered against the corporation, and so far as the evidence shows, no creditors had previously sued them. He and the corporation, prior to this time, had been in the habit of issuing notes for the accommodation of each other. Before bringing his suits he made no effort either to collect his debt or to have it secured, though the corporation undoubtedly, with

very little effort, could have raised the sum necessary to pay it, and had property amply sufficient to secure it. He says he asked, on August 28, for the return of the \$167.71, loaned August 27; payment was not made, but he does not pretend that his demand was repulsed offensively, so that his indignation was aroused, or that any disclosure was made which excited his fears. In his narrative of what preceded the suits, nothing can be found which justifies his conduct or discloses the slightest reason or motive for his suits. In view of the facts, as he states them himself, it is impossible to resist the conviction that his suits were not the result of a scheme, concocted by him and the Secretary to attain some object which he now desires to conceal.

The events occurring at the sale, as well as those which immediately preceded and succeeded it, show, I think, with even greater clearness the real purpose of the parties. Mr. Squier says, after he obtained his judgments, he told the Secretary he was going to sell if he was not paid. The Secretary was not disturbed by this announcement, at least he did nothing and said nothing to prevent the threat from being carried into execution. A short time before the sale, it is proved that the Secretary exhibited a bundle of papers, which he said were the advertisements put up by the constable, and that they had not been up five minutes before they were taken down. No attempt has been made to prove where the notices of the sale were set up, or to show that they remained up for a longer time than that mentioned by the Secretary. On the day before the sale, and on the day of the sale, the Secretary made an inventory of all the tangible property of the corporation. Why he did so does not appear. It was not exhibited at the sale. The defendant says he never saw it.

The hands employed in the factory were kept at work until midday on the day of sale, when they were sent away by order of the Secretary, and given

leave to use the balance of the day as a holiday. They were not discharged, nor informed of the sale, nor does it appear that the slightest intimation was given to them that it was at all uncertain whether they would be required to resume work in the morning. It does not appear that any of them were at the sale, and there is nothing to show that they knew a sale was to be made. The Secretary sent a messenger for a person that Mr. Squier had requested to attend the sale, but who had not appeared when the constable was ready to proceed. 10

As already stated, the property was sold as an entirety. The constable thinks he sold it in three lots, but the bidding at the sale, as given by Mr. Squier, shows conclusively that he is mistaken. Who gave direction as to how the property should be sold neither Mr. Squier nor the constable can tell. Mr. Squier is sure he did not, while the constable says that he publicly asked for direction and received it, but cannot tell from whom it came. Immediately after the sale, Mr. Squier took possession of the property, and also of the factory, though he had acquired no rights to the term of the corporation in the factory. He says he told the secretary that he should continue the business, and desired him to remain in charge. The secretary at once consented to do so. Though Mr. Squier positively affirms that he had no understanding or arrangement with the secretary before the sale, yet, I think, it is impossible for any one to listen to his story describing what transpired between them, after the sale, without seeing almost as clearly as though no effort to conceal anything had been made, that both fully understood that the business was to be continued, and that the secretary was to remain in charge. Mr. Squier admits that he expected the workmen to return the next morning and resume work. Business was resumed the next morning in the name of the corporation, and was continued in 40

its name until this suit was brought. The name of the corporation was used with the consent of its secretary, in order, as it is said, that Mr. Squier might have the benefit of it as a trademark. The goods sold were shipped in the name of the corporation, with the words, "From W. S. Squier" written across the shipping receipts, and charged upon the books of the corporation. The accounts so charged were afterwards assigned by  
 10 the corporation, acting by its secretary, to Mr. Squier. In one instance, it is proved that an account so charged was collected by draft on the debtor, drawn by the corporation, the secretary, of course, acting for the corporation. A short time after the sale, debts to the corporation, amounting to about \$1,900, were assigned by the corporation to Mr. Squier, upon which, he says, he advanced to its secretary, at various times, about \$1,500. He says he has collected on the accounts so assigned  
 20 about \$650, and that the officers and agents of the corporation have collected and appropriated the balance.

These facts, in my judgment, speak for themselves. They require no comment. They demonstrate, beyond doubt, the true character of this transaction. They permit but one deduction, and that is, that the judgments and sale were an entirely friendly proceeding, contrived and arranged by Mr. Squier and the secretary of the  
 30 corporation, for the purpose of effecting an ostensible change in the ownership of the property of the corporation, with intent to defeat the enforcement of the complainant's claim. The assignment to Mr. Squier of the debts due to the corporation is, I think, tainted with the same illegality. It was the natural sequence of what preceded it, and is manifestly injected with the same evil purpose.

A decree will be advised setting aside the sale and assignments, and requiring the defendant Squier to



able belonging to said Company to said Squier was also fraudulent, and made with a like intent and purpose; and that the complainants are entitled to relief, and to have the property of said Company, received by said Squier under said sale and by said assignment applied to the payment of their judgment set forth in the bill of complaint.

- It is thereupon, on this fourteenth day of March, in the year of our Lord one thousand eight hundred and eighty-one, by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the sale of the property of The H. C. Burnet Manufacturing Company, under the judgment obtained by William S. Squier against said Company was a fraud on the complainants, and the same is hereby set aside and declared void, and of no effect; that the assignment of the book accounts, bills receivable, property and assets of said Company to said Squier subsequent to said sale was also fraudulent, and the same is hereby set aside; and that the complainants are entitled to have the proceeds of the sale of property in the hands of Elias N. Miller, Esq., the Receiver appointed in this cause, applied to the payment of their judgment, and that the said Receiver do pay over the moneys in his hands, after deducting such expenses and commissions as may be allowed to him for his services to the complainants or their solicitors on account of their judgment.
- And it is further ordered, adjudged and decreed that whatever said William S. Squier has received from the property purchased by him at said sale, besides what moneys are in the hands of said Receiver, and whatever said Squier has received from the assets, accounts and bills receivable assigned to him subsequent to said sale, be applied to the payment of the complainant's judgment, so far as the same may be necessary for that purpose, and that it be referred to William S. Gummere, Esq., one of the Masters of this Court, to take and state an ac-

count of, and that he report to this Court what said Squier has received from said sale, and from the assets and accounts assigned to him subsequent to said sale, and what is the value of the property of the said Company so purchased by him, and of the assets so assigned to him, and what sum he should be charged with by reason of his appropriation of the same to his use, and that the evidence already taken in this cause, so far as the same is material, may be used before said Master, and the parties 10 shall also be at liberty to produce further evidence before said Master.

And that the said Master do make his report with all convenient speed. And it is further ordered, adjudged and decreed that the defendants do pay to the complainants their costs in this suit, to be taxed.

And all further equity is reserved until the coming in of the said Master's report.

THEODORE RUNYON. 20

Respectfully advised,

A. V. VAN FLEET,  
V. C.

(A true copy.)

H. S. LITTLE,  
Cl'k.

Endorsed—Filed March 14, 1881.

## IN CHANCERY OF NEW JERSEY.

	Between—	
	THE MECHANICS' NATIONAL BANK,	
	at Newark,	
		Compl't,
10	and	} On Bill, &c.
	THE H. C. BURNETT MANUFACTUR-	
	ING COMPANY and WILLIAM S.	
	SQUIER,	
		Defdts.

The defendant William S. Squier hereby appeals from the decree entered in the above cause on the  
 20 fourteenth day of March, eighteen hundred and eighty-one, and from the whole and every part and parcel of the said decree, to the Court of Errors and Appeals in the last resort in all causes.

Dated March 23, 1881.

JOHN LILLY,

Solr. of Defdt. William S. Squier.

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

JOHN LILLY,

30 of Counsel with Defdt. S. Squier.

A true copy.

H. S. LITTLE,

Clerk.

Endorsed—Filed March 23, 1881.

Service acknowledged of a true copy of the within notice this 14th day of April, 1881.

WHITEHEAD & CONDIT,

Per F. M. BABBITT.

40 Filed June 21, 1881.

To the Honorable the Court of Errors and Appeals  
in the last resort in all causes :

The humble petition of William S. Squier, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by His Honor, Theodore Runyon, Chancellor of the State of New Jersey, bearing date on the fourteenth day of March, in the year of our Lord one thousand 10  
eight hundred and eighty-one, wherein the said The Mechanics National Bank at Newark were complainants, and the said The H. C. Burnet Manufacturing Company and William S. Squier were defendants in this respect, to wit, that the said decree adjudges that the sale of the property of the H. C. Burnet Manufacturing Company under the judgments obtained by William S. Squier against said company, was a fraud on the said complainants, and that the same was set aside and declared void and of 20  
no effect, and also that the assignment of the book accounts, bills receivable, property and assets of said company to said Squier subsequent to said sale, was also fraudulent, and that the same was also set aside, and also that the complainants were entitled to have the proceeds of the sale of the property in the hands of Elias N. Miller, Esquire, the Receiver appointed in this cause, applied to the payment of their judgments, and that the said Receiver should pay over the moneys in his hands, after deducting 30  
such expenses and commissions as may be allowed to him for his services to the complainants or their solicitors on account of their judgment, and also that whatever said William S. Squier had received from the property purchased by him at said sale, besides what moneys are in the hands of said Receiver, and whatever said Squier had received from the assets, accounts and bills receivable assigned to him subsequent to said sale, should be applied to the payment of the complainant's judgment so far as 40

37 the same may be necessary for that purpose, and also that it be referred to William S. Gummere, Esq., one of the Masters of this Court, to take and state an account of and that he report to this Court what said Squier has received from said sale, and from the assets and accounts assigned to him subsequent to said sale, and what was the value of the property of the said company so purchased by him and of the assets so assigned to him, and what sum should be charged with by reason of his appropriation of the same to his use, and also that the defendants do pay to the complainants their costs in their suit to be taxed.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous and contrary to both law and equity.

And your petitioner humbly further appeals from the whole and every part and parcel of the said decree to the Court of Errors and Appeals in the last resort in all causes, upon the grounds above stated.

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

JOHN LILLY,  
Solicitor and of Counsel with Appellant.

40

STATE OF NEW JERSEY, }  
[Coat of Arms.] }  
Department of State. }

I, HENRY C. KELSEY, Secretary of the State of New Jersey and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of the Petition of Appeal in the above stated cause as the same is taken from and compared with the

original filed June 21st, 1881, now remaining on file in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this 21st day of June, A.D. 1881.

HENRY C. KELSEY,  
Secretary of State.

Endorsed—Filed June 21, 1881.

10

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between—

WILLIAM S. SQUIER,  
Appellant,

and

THE MECHANICS' NATIONAL BANK  
OF NEWARK,

Respondents.

On Appeal.

20

We hereby acknowledge that we have this 2d day of July, A. D. Eighteen hundred and eighty-  
one, received from John Lilly, the solicitor of the  
appellant, a copy, duly certified, of the Petition of  
Appeal filed in the above-stated cause, as required  
by the rules of this Court.

WHITEHEAD & CONDIT,  
Sol's for Mech's' Nat'l Bank.

40

THE COURT OF ERRORS AND APPEALS IN THE LAST  
RESORT IN ALL CAUSES.

Between—

WILLIAM S. SQUIER,  
Appellant,

and

THE MECHANICS' NATIONAL BANK at  
Newark, N. J.,

Respondents.

Answer to Pe-  
tition of Appeal.

10

The answer of the above-named respondents to the  
Petition of Appeal of the above named appel-  
lant :

20

The respondents, not acknowledging all or any  
of the matters which in the said Petition of Appeal  
are contained to be true, for answer thereto, nev-  
ertheless says and admits that a decree was on, the  
eighteenth day of March last past, made and en-  
tered in the Court of Chancery, in the cause for  
that purpose mentioned in the said Petition, as is  
therein stated, but as to the substance and form  
thereof, these respondents pray to refer thereto  
when the same shall be produced.

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And these respondents are advised and believe  
that the said decree is agreeable to equity, and  
they pray that the same may be affirmed, with costs  
to be adjudged to these respondents.

WHITEHEAD & CONDIT,  
Solicitors for and of Counsel with  
Respondents.

Endorsed—Filed July 27th, 1881.

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between—

WILLIAM S. SQUIER,

Appellant,

*and*

THE MECHANICS NATIONAL BANK at

NEWARK,

Respondents.

On Appeal.

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It appearing to the Court that the above-named respondent, since the appeal was taken in said cause, has passed into the hands of the United States Government, and that Frederick Frelinghuysen has been duly appointed the receiver thereof.

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It is on, this Fifteenth day of November, in the year eighteen hundred and eighty-one, ordered by the Court, that the said Frederick Frelinghuysen, receiver of said respondents, be substituted in their place as the respondent in the above appeal.

On motion of

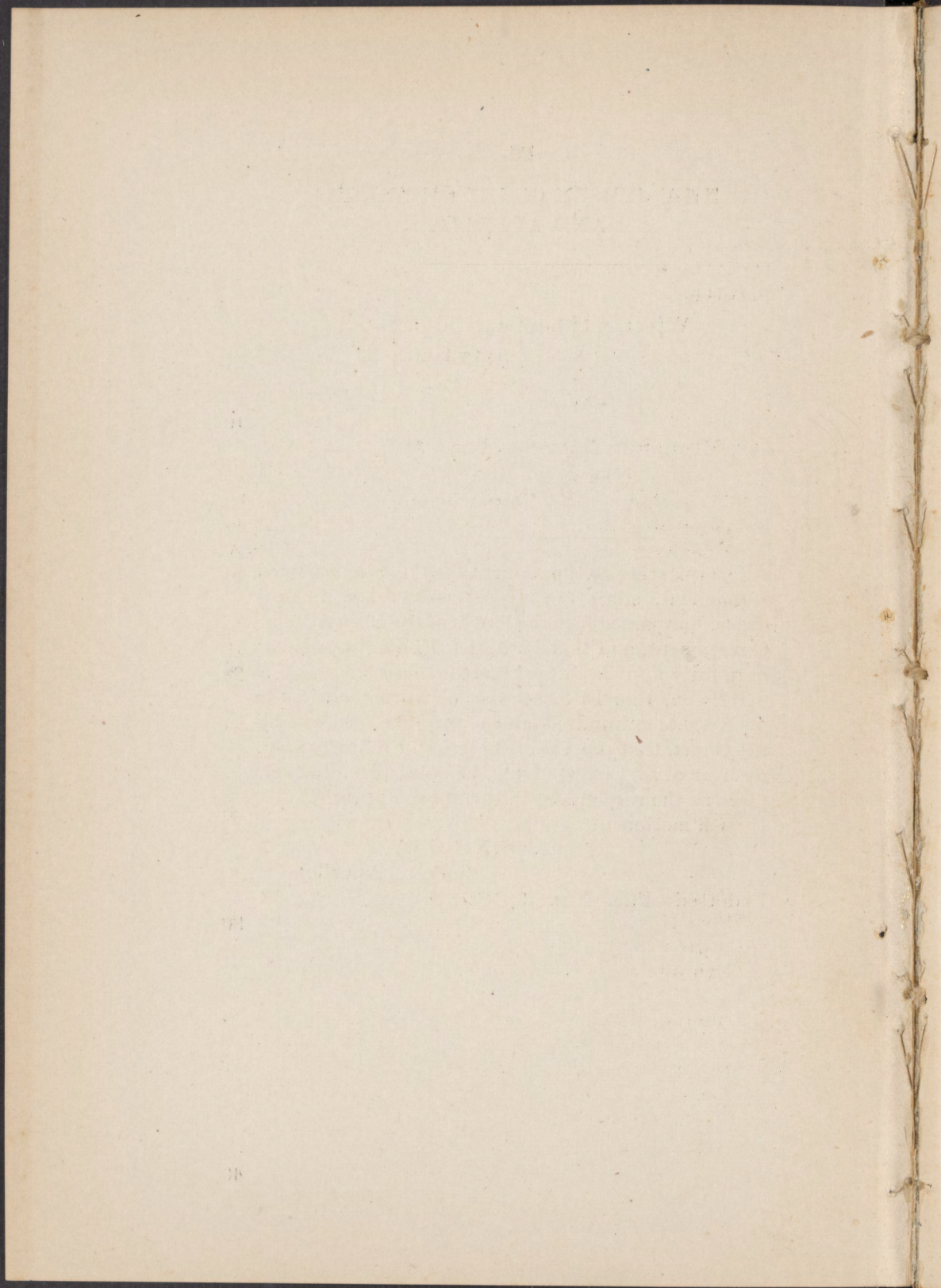
JOHN LILLY,

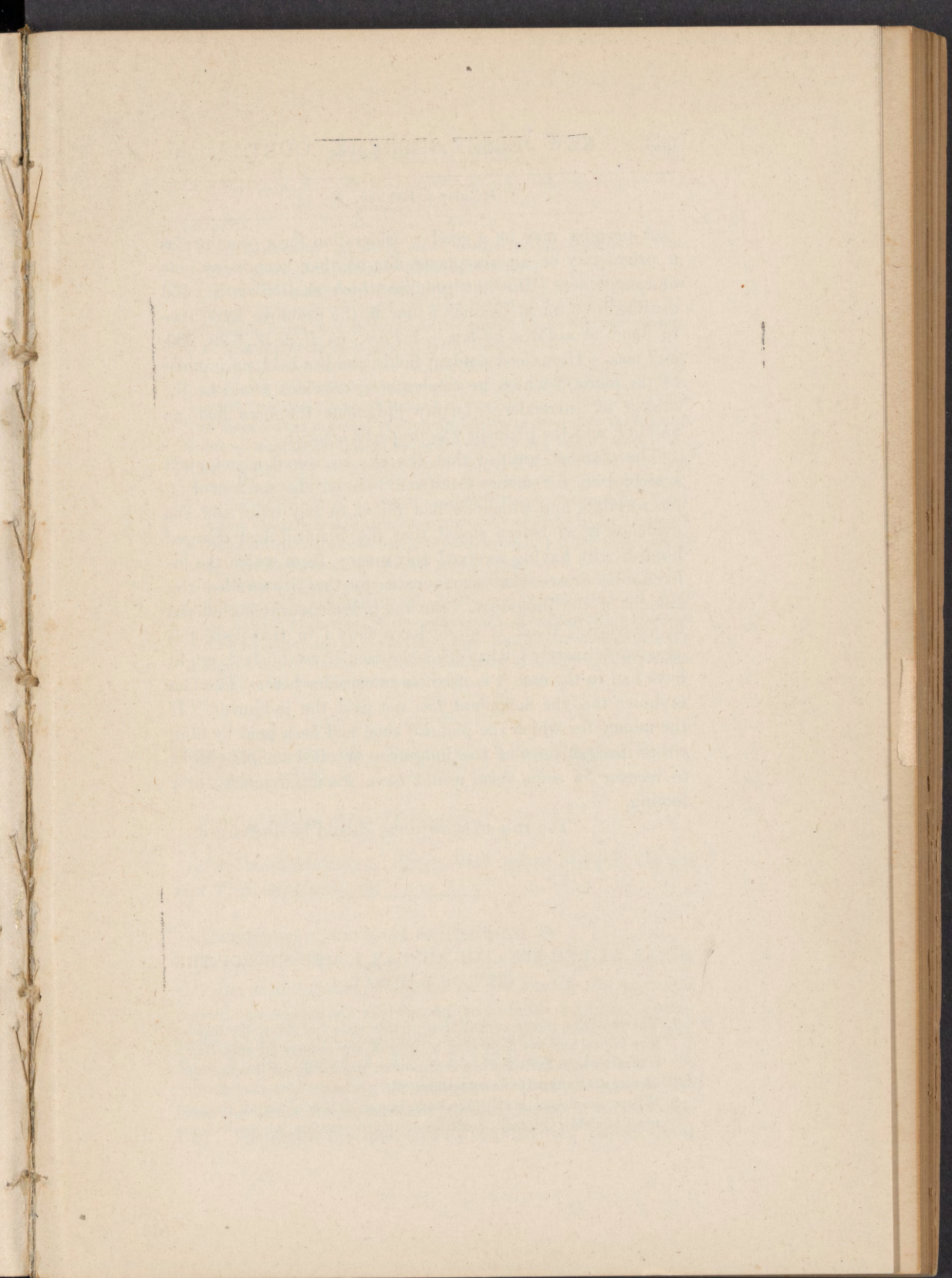
Sol'r of Appellant.

Endorsed—Filed Nov. 15, 1881.

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A promise may be a good consideration for a promise ; as a promissory or an acceptance for another promissory note or acceptance. But the promise which shall form a valid consideration, must be such a one as the promisee may have in hand to enforce by law. 1 *Pars. on B. & N.*, 199, 200, and note. Here the defendant holds, and has held, no promise of the plaintiff which he can enforce, or which could be the subject of surrender. In my judgment the note had no validity, and the plaintiff was properly nonsuit.

The plaintiff testified that the city recovered a judgment against him for money due from him on the settlement of his accounts and which he had failed to pay over, and the evidence is, as before stated, that the plaintiff had charged himself with having received this money, from which the inference is drawn that such credit to the city swelled the amount of the judgment. But the judgment was not offered in evidence. What it might have shown in that respect is speculation merely ; what effect the fact, if established, might have had in the case it is needless to consider here. The fact is shown that the defendant has not paid the judgment. If the money for which the plaintiff sued had been paid by him, either through force of the judgment or otherwise, his right to recover in some form would have stood on much surer footing.

The rule to show cause should be discharged.

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STATE, EX REL. BENAHAH MUNDAY, v. ASSESSORS OF THE  
CITY OF RAHWAY.

1. The provision in the constitution of this state forbidding the legislature to pass any law depriving a party of any remedy for enforcing a contract which existed when the contract was made, applies to remedies against municipal corporations.
2. Where municipal authorities have power to levy a tax for the payment of debts, judgment creditors of the corporation, whose debts are

## Munday v. Rahway.

- not collectible by execution, have a right to the exercise of that power, which the court will enforce by *mandamus*.
3. Where such a power existed at the time the debt was contracted, the remedy by *mandamus* is within the protection of the constitution.
  4. A statute which merely regulates the mode of pursuing the remedy, without impairing its substance, is constitutional.
  5. The supplement to "An act for the better regulation of proceedings upon writs of *mandamus*," approved March 3d, 1880, (*Pamph. L.* 1880, p. 102,) requires the court, before issuing such writs to compel the levy of a tax for the payment of municipal debts, to determine the highest rate of taxation capable of being imposed on the municipality without injury to the interests of the creditors of the corporation whose claims are not yet due, and forbids the court to direct the levying of any more than that rate will produce. Before the passage of this statute the relator was a creditor of the city of Rahway, the authorities of which had ample power to levy taxes to pay his debt. *Held*, that the enforcement of the law would deprive him of his constitutional remedy, and hence, as to him, the statute was invalid.
  6. This statute is unconstitutional, also, because it aims to devolve upon the judicial department of the government an exclusively legislative function pertaining to the taxing power—the duty of determining the highest rate of taxation which can be borne by a municipality without injury to its creditors at large.

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Argued at February Term, 1881, before Justices REED,  
PARKER and DIXON.

For the relator, *Alan H. Strong*.

For the defendant, *G. Berry*, with whom were *F. Bergen*  
and *T. N. McCarter*.

The opinion of the court was delivered by

DIXON, J. The relator having recovered judgment against the mayor and common council of the city of Rahway, and served his execution thereon, in accordance with the supplement to the "Act respecting executions," approved March 27th, 1878, (*Pamph. L.* 1878, p. 182,) now seeks a writ of *mandamus* commanding the assessors of the city to assess and levy the amount due, pursuant to the directions of that statute. Thereupon the municipality appears and requests that

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the court will proceed in the premises only in conformity with the supplement to the "Act for the better regulation of proceedings upon writs of *mandamus*," approved March 3d, 1880. *Pamph. L.* 1880, p. 102. To this request the relator interposes two objections—first, that the act of 1880 is, as to him, a violation of paragraph 3, section 7, article IV. of the state constitution, which forbids the legislature to pass any law depriving a party of any remedy for enforcing a contract which existed when the contract was made; and, secondly, that the act can be executed only by this court's assuming functions which properly belong to the legislative department alone, contrary to article III. of our constitution.

As to the first of these objections, the defendant insists that the paragraph mentioned does not relate to remedies against municipal corporations; that such bodies are mere representatives of the sovereign power, and, consequently, can be sued only as the legislature may permit, and that this permission may at any time be revoked or modified, at legislative discretion. This position is untenable. The entire provision is: "The legislature shall not pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." The juxtaposition of the last two clauses of this paragraph renders it highly probable, on settled rules of interpretation, that whatever contracts are guarded by the language concerning their obligation, are referred to by the language concerning the remedy. No reason appears for an opposite conclusion. But long before the provision preserving the obligation of contracts was placed in our constitution, it had become certain, by the decisions in *Fletcher v. Peck*, 6 *Cranch* 87, and in subsequent cases, that the same words in the federal constitution embraced contracts made by the state. In the absence of any clear indication to the contrary, we must infer that its use in our own organic law was designed to have the same scope. And such is the view expressed in several cases. *Martin v. Somerville Water Power Co.*, 3 *Wall., Jr.*, 206;

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*Bridge Co. v. H. L. & I. Co.*, 2 *Beas.* 81; *Zabriskie v. Hack. & N. Y. R. R. Co.*, 3 *C. E. Green* 178; *Black v. D. & R. Canal Co.*, 9 *C. E. Green* 455.

Hence there seems no room to doubt that if, when one made a contract with the state, he was entitled to a remedy for its enforcement, the legislature would not have the right to deprive him of it.

But were this otherwise, it has never been held that municipal corporations possessed that immunity from suits upon contracts which the sovereign itself holds; and it is an everyday's occurrence that they are sued thereon as are private bodies. Moreover, the doctrine that their contracts are embraced within this constitutional provision is expressly recognized in *Rader v. Southeasterly Road District*, 7 *Vroom* 273, where Justice Depue says: "The only limitation on the operation of such repeal [of municipal charters] is as to creditors, that it shall not operate to impair the obligation of existing contracts, or deprive them of any remedy for enforcing such contracts which existed when they were made." The same idea is announced in *Vanderbeck v. Inhabitants of Englewood*, 10 *Vroom* 345, and the Chief Justice, in *Scaine v. Belleville*, 10 *Vroom* 526, declares it to be not in any quarter seriously questioned. The case of *Meriwether v. Garrett*, 102 *U. S.* 472, is cited as establishing the opposite principle. But it does not. It merely holds that, by the removal of the agencies through which the courts must act in enforcing the remedy of creditors, the legislature can practically destroy the remedy; thus illustrating the truth that, in some instances, even constitutional rights need for their maintenance the co-operation of all the departments of government. But while the agencies remain, I do not see how the judiciary can, in view of their constitutional obligations, fail to give effect to the lawful demands of suitors. *Wolff v. N. Orleans*, 103 *U. S.* 358.

The defendant next insists that the remedy which the relator is now pursuing did not exist at the time his contract was made. The contract consists of city bonds for the payment

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of money issued in 1875; the exact remedy now sought was given by the statute of 1878. This averment, therefore, is formally true; but, in substance, it is false. That these bonds created an absolute debt of the corporation is conclusively established by the recovery of the judgment upon them. *United States v. New Orleans*, 98 *U. S.* 381. The city charter, (*Pamph. L.* 1865, p. 499,) in section 47, confers upon the common council power to raise by tax, in each year, such sum or sums as they shall deem expedient for (*inter alia*) the payment of the interest upon the city debt and such part of the principal thereof as may be due and payable, and, in section 48, makes it the duty of the assessors to assess the sums so required. Thus was granted to the council ample power to raise by tax the money necessary to pay the relator's debt, and the charter provided complete machinery for carrying this power into effect. The power and machinery continued to exist when the relator's bonds were issued, and still remain. Such a power in public officers becomes a duty whenever the enforcement of private rights depends upon its exercise; and the language by which it is conferred, though permissive in form, is considered as in fact peremptory. *Supervisors v. United States*, 4 *Wall.* 435; *City of Galena v. Amy*, 5 *Wall.* 705. Hence, upon the maturity of the relator's bonds, it became the duty of the council to direct a levy to pay them; and after the relator had, by judgment and unsatisfied execution, shown that he had no other means of payment, this court would, without doubt, have awarded to him a *mandamus* requiring the council to perform that duty. *Shackelton v. Town of Guttenberg*, 10 *Vroom* 660. "When creditors are unable to obtain payment of their judgments against municipal bodies by execution, they can proceed by *mandamus* against the municipal authorities to compel them to levy the necessary tax for that purpose, if such authorities are clothed by the legislature with the taxing power." Field, J., in *Meriwether v. Garrett*, *supra*. See, also, 2 *Dill. on Mun. Corp.* (3d ed.,) § 849, (685,) and notes.

Thus it appears that, at the time these bonds were issued,

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one of the existing remedies—indeed, practically the sole remedy, (*Lyon v. City of Elizabeth*, ante p. 158,)—for enforcing their payment, was by *mandamus* directing taxes to be levied in the city for that purpose. This is the same remedy which the act of 1878 affords. That act merely makes a change in the mode of procedure. Instead of a writ to the council requiring them to direct the assessors to levy the tax, which would be the routine under the charter, the act of 1878 permits the writ to go directly to the assessors. Such a change in the method of pursuing the remedy the legislature could constitutionally make; and though it had tended somewhat to delay, rather than to expedite the creditor, it would not have invaded any of his rights: his remedy would have still been substantially preserved. Clearly, therefore, although the relator is pursuing his remedy under the act of 1878, it is proper for him to insist that it is the same remedy as he had when his contract was made.

It remains to consider whether the act of 1880, if enforced, would deprive him of that remedy.

This statute requires the court to ascertain—1: the total indebtedness of the municipal corporation, the time when payable and the rate of interest payable thereon; 2: the real value for purposes of taxation of the taxable property within such corporation; 3: the amount required to be raised within such corporation for necessary expenses for municipal and other purposes during the current year; and to determine, 4: the highest rate of taxation capable of being imposed on such corporation without injury to the interests of the creditors of the corporation whose claims are not yet due. Then the *mandamus* must direct the raising of no more than the highest rate so determined will realize; and the sum so raised is to be brought into court and distributed *pro rata* among the relator and such other judgment creditors of the corporation as shall apply and make proof of their judgments. This process is to be repeated annually until the claims so proved are satisfied.

It is impossible to give effect to this legislation consistently with the relator's former rights. Its central feature is the

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protection of the interests of creditors whose claims are not yet due. Before its passage, the court, on the application of the relator, would have considered only the amount of his judgment, and would have commanded that to be raised, regardless of outstanding debts. In *City of Galena v. Amy*, 5 Wall. 705, an effort was made to restrain the court from issuing a *mandamus* for the levy of a tax to satisfy a judgment, because of the diminished revenues of the city and the disproportionate magnitude of its debt. But the court declared: "We can give no weight to considerations of this character when placed in the scale as a counterpoise to the contract, the law, the legal rights of the creditor and our duty to enforce them." Such was the language of the Supreme Court of the United States concerning a suitor who had no rights in his remedy save as they inhered in the obligation of his contract. With less hesitation, if there could be any hesitation in either case, would it be applicable in a court where the specific remedy is as inviolable as the contract itself. But, according to this statute, these considerations thus ignored are to be held paramount to the relator's demands. He who before was, among creditors, preferred in right because first in time, must now be subordinated to those whose unripened claims should naturally be postponed to his debt. Thus the act would strip him of his priority, and attempts what, in *Martin v. Somerville Water Power*, 3 Wall., Jr., 206, was decided to be beyond legislative power. It is as if the legislature enacted that no execution should issue to enforce a pre-existing judgment to the prejudice of the interests of creditors whose claims were not yet due. Certainly no one would contend that such a law could be valid; nor would it be saved from invalidity because it substituted for the absolute right to execution a conditional and less advantageous remedy. A law, to be forbidden, need not deprive the party of *all* remedy; it is enough if it take away *any* remedy to which he was entitled. And by the term "remedy" is here meant, not the form, nor perhaps the *forum*, (*Newark Savings Ins. v. Forman*, 6 Stew. 436,) in which the creditor is to seek re-

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dress, but the substance of his right to resort to the person or any property of his debtor for satisfaction. *Rader v. Southeastery Road District*, 7 *Vroom* 273.

But it is suggested that *Meriwether v. Garrett*, *ubi supra*, gives countenance to the idea that private property in cities does not constitute a fund to which corporate creditors have any right to look for payment of their debts. We do not so understand that decision. The second resolution of the court, "that private property of individuals within the limits of the territory of the city cannot be subjected to the payment of the debts of the city, except through taxation," plainly implies that, through taxation, it may be. The opposite inference would be contrary to all previous decisions. Clearly, creditors have the right to resort to such property if the power of taxation exists in subordinate bodies for its enforcement, and if the right and power were cotemporary with the inception of their debts, they become a constitutional remedy. The statute of 1880, by denying this right to the relator and conceding to him, instead, a right to claim the exercise of the power of taxation only so far as may not injure the interests of other creditors, aims to destroy the substantial value of his remedy. Indeed, if necessary, it would not be difficult to show that it goes even further, and impairs the obligation of the contract; for, after some wavering, the Supreme Court of the United States has at length declared, in *Louisiana v. New Orleans*, 102 *U. S.* 203, "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced—by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation. If it tends to postpone or retard the enforcement of the contract, the obligation of the latter is to that extent weakened. The Latin proverb, *qui cito dat bis dat*—he who gives quickly gives twice—has its counterpart in a maxim equally sound—*qui serius solvit, minus solvit*—he who pays too late, pays less. Any authorization of the postponement of payment, or of means by which such postponement might be effected, is in conflict with the

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constitutional inhibition." This censure is plainly applicable to the act of 1880 in its effect upon the relator.

Again, it is urged that the writ of *mandamus* is a prerogative writ, which, without this statute, might be issued or withheld in our discretion, and consequently may now properly be denied, except on conditions which will meet the provisions of the act. But such was not the range of our discretion in the class of cases for which the writ is now invoked. The right of judgment creditors of municipal bodies to this writ was about as clearly defined as is that of any suitor to any writ which does not issue of course. The writ had become substantially a private remedy in these cases. The court was bound to allow it whenever the proper facts were shown, and those facts were not such as this law contemplates. If the legislature can control the discretion of the court as to the necessary facts, then it can deprive the party of his remedy; if the court yields to an attempt at such control, the same result is equally accomplished.

We are constrained to declare this act unconstitutional.

The second objection made by the relator to this statute seems to be equally well grounded; that it undertakes to cast upon the courts a purely legislative function, and so is invalid.

The third article of our constitution provides, "The powers of the government shall be divided into three distinct departments: the legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided."

"In the creation of three distinct departments of the government, and the apportionment of power among them, the authority to tax necessarily falls to the legislative." *Cooley on Tax.* 32.

"As a general rule, the taxing power has been treated by the judiciary as vested in the absolute discretion of the legislative bodies." *Sedg. on Stat. and Const. Law* 554.

And in the latest decision of the Supreme Court of the United States touching this subject, (*Meriwether v. Garrett*,

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*ubi supra*,) all the judges concur in the view that the power of taxation is legislative, that the levying of taxes is not a judicial act, but one which belongs to the legislative department exclusively, to be performed upon considerations of policy, necessity and the public welfare.

The same doctrine has been frequently enunciated in our state courts. *State v. Newark*, 2 *Dutcher* 519; *State, Ruckman, v. Demarest*, 3 *Vroom* 528; *State, Gaines, pros., v. Hudson Co. Ave. Com'rs*, 8 *Vroom* 12. See 2 *Dill. on Mun. Corp.*, § 737, (588), note 2, (3d ed.)

But by the law now under review, the court is required to determine what rate of taxation can be imposed on the corporation without injury to the interests of its creditors whose claims are not yet due. These claims aggregate something like \$1,000,000, about forty per cent. of the taxable property in the city, and will mature in various amounts during the next eight years. The problem thus presented for solution involves considerations upon which the courts have never assumed to pass, and which seem to me improper for judicial investigation and determination. As against the relator, the interests of so large a body of creditors are identical, or closely interwoven, with the interests of the municipality. Whatever rate of taxation will injure the latter will jeopardize the former. The amount of tax which can be borne without material prejudice to the city depends upon the prosperity of its inhabitants, the inducements which the place affords to manufacturers, merchants, artisans, taste and wealth, whether its local government is honest, economical and public-spirited or the contrary, and other such matters of general concern. These are questions of fact, of which the courts cannot take judicial cognizance without proof, and if this statute is to be intelligently enforced, every creditor who seeks a *mandamus* must enter into a contest with the city to lay before us the truth concerning them by such evidence as is available. And when the truth appears, the point for determination will still be one to be decided, not by any known rules of law, but upon grounds of public policy; what rate of taxation may, in view

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of these facts, be imposed without working detriment to the community. In *State v. Demarest, ubi supra*, the Court of Errors directly decided that the question whether the interests of the people of the state would be best promoted by levying a tax for bounty to volunteers, or by other measures, was one of which the legislature was the sole judge. The question whether the interests of a city will be injured by levying a tax of \$10,000 or \$100,000 is of exactly the same character; and either the legislature or some legislative body to which it may be delegated, must decide it; but the delegation cannot be made to any branch of the judicial department. "It is as incompetent for the legislature to confer the power to tax upon the judiciary as upon the executive." *Cooley on Tax.*

34. Courts can determine whether constitutional or legislative restraints and rules as to taxation have been observed, and whether any individual is called upon to pay more than his due proportion, and can compel subordinate legislative bodies to exercise the powers conferred upon them for purposes of taxation, but never has it been held that they could either assume or control the legislative function of deciding what sums the public interests require or permit to be raised.

We therefore are of opinion that a writ of *mandamus* should issue, commanding the assessors to levy a tax sufficient to pay the relator's judgment. We think the relator is entitled to a peremptory writ; but if the defendants desire to bring a writ of error, an issue may be framed by an alternative writ, a return thereto setting forth the proceedings under the statute of 1880 and the facts thereby shown, and a demurrer to such return, with a judgment thereon in favor of the relator, and if such issue be framed and error brought with due promptness, proceedings upon the peremptory writ will be stayed till the determination of the court above.

## POINTS.

### I.

That the Mandamus Act of March 3d, 1880, L. p. 102 is constitutional.

### II.

That the Legislature of this State has power to regulate the Courts discretion in matters of practice, and that said act is no more than a fair exercise of that power.

### III.

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That no such vested rights can be obtained in general laws providing for taxation which will prevent the Legislature at any time from changing those laws by virtue of its sovereign control over the subject.

### IV.

That contracts which depend on taxation for payment are subject to such changes of remedy as follow

alterations of the law of taxation, and changes in that law do not impair the remedy within the meaning of the constitution.

## V.

All contracts are subject to insolvent and assignment laws, and it is within the power of the Legislature to marshal the assets of any insolvent corporation for equitable distribution.

## VI.

- 10 That by the discretionary control which the Court has over the writ of mandamus the Court has power to hear and consider evidence as to the rights and equities of others than the relators, and to grant the writ only on terms that are reasonable.