

Black No 9

N. J. Court of Errors and Appeals.

BETWEEN

BENJAMIN A. VAIL,
RECEIVER, ETC.,
Appellant.

and

JAMES JAMESON,
Respondent,

An Appeal.

Points of Appellant.

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The order appealed from in this cause, (Case, page 20) was made upon a petition filed by James Jameson in a cause wherein Catharine G. Phillips was complainant, and The Woodbridge Clay Mining and Refining Company were defendants. The petition (Case, page 12) prayed that the appellant, the Receiver appointed in said cause of the said Company, might pay to James Jameson \$924.55, the proceeds of sale of certain goods sold by said Receiver, which were covered by a certain chattel mortgage held by said Jameson, dated September 27, 1884. The Receiver in his answer, (Case page 16) alleged that at the time of the execution of said mortgage, the said Company was insolvent, that this fact was known to said Jameson, and that by reason thereof, the said mortgage was null and void as to creditors; and also alleged that the sum of \$107.80 was paid to said Jameson after the making of the restraining order by the Chancellor, and should be accounted for. It appeared on the hearing of the rule to show cause, that of the notes paid

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by Jameson and secured by the chattel mortgage, one for \$2,000 was given after the mortgage was executed. (Case page 22, l. 35.) The cause was heard by Van Fleet, Vice Chancellor, upon the petition, answer and certain affidavits upon both sides. (Case page 21 et seq.)

10 It is claimed on behalf of the appellant,

1. That under the provisions of sections 72 and 77 of the "Act concerning corporations" (Revision, page 175) any mortgage or conveyance of the property of a corporation after it becomes insolvent, is null and void as to creditors. Previous to the Revision of 1874, such had been the law. *Holcomb v. New Hope Bridge Co.*, 1 Stock. 457; *Suydam v. Bank of New Brunswick*, 2 Gr. Chy. 114; *State Bank v. Bank of New Brunswick*, 2 Gr. Chy. 266; *Stratton v. Allen*, 1 C. E. Green 229; *Wells v. Rahway Rubber Co.*, 4 C. E. Green 402; *American Co. v. Paterson Co.*, 7 C. E. Green 72.

30 That the Company in question was insolvent when the chattel mortgage was given, was clearly shown by the affidavits of S. G. Phillips, R. C. Brewster, B. A. Vail, and H. C. Ingraham, (Case, page 27, et. seq.) and also that Jameson was aware of this fact. These affidavits were not contradicted.

2. That although the second section of the "Act to prevent frauds by Incorporated Companies," (Nixon's Digest, page 405) was not included in the Revision, yet the remaining portions of the Act, including section 15, (section 80 of revised Act) are unchanged, and their language is such as to require the same construction of the Act as had previously
4 been given to it.

3. That the Receiver clearly had a right to recover back the sum of \$107.80, paid to Jameson, after the making of the restraining order, (Case, page 17, l.

31, and page 38) and if so, was entitled to have it offset against the claim of Jameson. Revision, page 191, §77.

4. That it was competent on the hearing of the rule to show cause to show that the said Company was insolvent when the mortgage was given. Wells v. Rahway Rubber Co., 4 C. E. Green 229, and cases above cited. 10

EPHRAIM CUTTER,

Sol'r of Appellant.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between BENJAMIN A. VAIL, RECEIVER OF THE WOODBRIDGE CLAY MINING AND REFINING Co. Appellant, and JAMES JAMESON, Respondent.	}	On Appeal.
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Points of C. C. Hommann, for Respondent.

FIRST POINT.

There was no error in the decision of the Vice-Chancellor in making the order appealed from.

Rev. of 1877, p. 191, sec. 80, gives the order in which the funds in the hands of the receiver are to be distributed, and the order appealed from is in conformity with the section cited.

SECOND POINT.

The company was not insolvent within the meaning of the statute on September 27, 1884.

Phillips, the president of the corporation, testifies that on or about the 20th of December following the giving of said mortgage the said company was compelled to suspend its business, &c., (vide Phillips' affidavit, p. 27, 39-44). The final decree (p. 6, 39-43) fixes the date of insolvency on the 10th day of December, 1884.

"The act respecting insolvent corporations, under which the proceedings were instituted, looks to the

suspension of the ordinary business of the company, or some overt act by which its insolvency may be ascertained and declared. The court cannot, upon an inquiry of this nature, undertake to investigate the financial ability of the corporation at previous periods, founded upon mere failure to meet its engagements, or upon the actual state of its finances, after its business has been suspended."

Beford vs. Newark Machine Co. 1 C. E. Gr. 120.

D. L. & W. R. R. Co. vs. Oxford Iron Co. 6 Stew. 192.

THIRD POINT.

The mortgage in this case was not a preference, but a security.

22, 36 et seq. While it appears that the respondent had, on the twenty-seventh day of September, 1884, already indorsed notes for the accommodation of the company amounting to four thousand dollars, more or less, he afterwards, to wit, on September 29th, 1884, endorsed a note for two thousand dollars for the accommodation of the company, which he paid February 10th, 1885, (vide Jameson's affidavit, p. 13, 20-25). The fund in the hands of the receiver derived from the sale of the mortgaged chattels amounts to \$924.55 (vide Jameson's petition, p. 13, 23-28, and answer, p. 17, 1-4). "A mortgage made in good faith to continue business is valid, though a part of the consideration is a present debt."

Blumensteil on Bankruptcy, p. 232.

Exparte Ames 7, Bankrupt Reg. 230.

Marvin vs. Chambers 13, Bankrupt Reg. 77.

Exparte Winder 1, L. R. Chan. Di.v, p. 290.

King vs. King 2, L. R. Chan. Div., p. 26. 256

FOURTH POINT.

Even if the corporation was insolvent and the mortgage a preference, under the present statute it would still be a valid and subsisting lien; for at common law an insolvent corporation, as well as an insolvent individual, may prefer one creditor to another, and that part of the statute of 1846, which forbade such preference by a corporation, was repealed by the revision of 1877.

The act forbidding sales, transfers, and assignments of the estate, effects, &c., &c., by the directors or managers of insolvent corporations, or sales, transfers, &c., in contemplation of insolvency, was the second section of the act of 1846. Revision of 1846, p. 129.

In the act concerning corporations, Rev. 1877, sec. 69 to 82, embrace sections of the act of 1846, but the second section was omitted and the whole act of 1846 repealed. Rev. of 1877, p. 1395-411 and p. 1122. sec. 16.

All the decisions based upon that statute, or the second section thereof are, therefore, inapplicable.

This left the power of a corporation to prefer its creditors as at common law, and the rule at common law favored that right.

Morawetz, *Private Corporations*, § 582, says:

“However, it is generally considered to be a settled rule of law that a corporation has the same power of making preferences amongst its creditors that an individual has, and an assignment of all the assets of a corporation to a trustee to pay certain creditors in full, leaving the others unpaid, will apparently be sustained both at law and in equity.”

Citing, 13 Ark. 563, 575.

Catlin vs. Eagle Bank, 6 Conn. 233.

Bump on *Fraudulent Conveyances*, p. 388, is to the same effect, citing *Catlin vs. Eagle Bank*, 6 Conn. 233 and other cases. See also *Sargent vs. Webster*, 13; *Metcalf*, 497.

FIFTH POINT.

As to the allegation in the answer (vide answer, pp. 17 and 18, 30-10) that the respondent had notice of the application to the Chancellor for the injunction, when he received the sum of one hundred and seven dollars and eighty cents, there is no evidence to support it. The amount was clearly due to him, and in the absence of notice of any restraining order he certainly had a right to receive it.

N. J. Court of Errors and Appeals.

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Between

BENJAMIN A. VAIL, RECEIVER
OF THE WOODBRIDGE CLAY
MINING AND REFINING CO.,

Appellant, } *On Appeal, etc.* 20

and

JAMES JAMESON,

Respondent.

On the 17th day of February, 1885, a bill was filed in the Court of Chancery by Catherine G. Phillips, complainant against the Woodbridge Clay Mining and Refining Company, defendants, alleging that the said company, a manufacturing corporation organized under the laws of the State of New Jersey, had become insolvent and had suspended its ordinary business for want of funds and could not resume its business with safety to the public and advantage to the stockholders, and that complainant was a stockholder therein and creditor thereof. 30

Under this bill such proceedings were taken that on the 19th day of February, 1885, the said company was declared insolvent and a receiver was appointed. 40

IN CHANCERY OF NEW JERSEY.

	BETWEEN	}	<i>On bill for Relief.</i>
10	CATHERINE G. PHILLIPS,		
	Compl't,		
	and		
	THE WOOBRIDGE CLAY MINING	}	
	AND REFINING COMPANY,		
	Deft.		

20 This matter coming on to be heard in the presence of Leslie Lupton the counsel of the complainant and the court being satisfied of the sufficiency of the application made in this cause and of the truth of the allegations contained in the bill exhibited herein.

30 It is on this seventeenth day of February in the year eighteen hundred and eighty-five ordered that the defendants The Woodbridge Clay Mining and Refining Company do show cause before the Chancellor at the chambers of the Vice Chancellor in the city of Newark on Thursday the nineteenth day of February instant at the hour of ten o'clock in the forenoon, why an injunction should not issue pursuant to the prayer of said bill, and a receiver be appointed to take charge of all the property and estate, books and papers of said defendant pursuant to the statute in such case made and provided.

40 And it is also ordered that until this order shall be made absolute or be discharged the said defendants, their officers, servants and agents absolutely desist and refrain from contracting any debt, or debts, and also from collecting or receiving any money owing to said defendants and also from paying out

any money or selling, assigning or transferring any of their property, estate or effects of any kind.

And it is also ordered that a true but uncertified copy of this order be served to-day on the president of said defendant corporation.

Respectfully advised,

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A. V. VAN FLEET, V. C.

THEODORE RUNYON,

C.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss—

LESLIE LUPTON of full age being duly sworn according to law on his oath saith : That he served 20 a true but uncertified copy of the foregoing order on Simeon G. Phillips the president of the therein named defendant corporation The Woodbridge Clay Mining and Refining Company, on the seventeenth day of this present month of February by delivering the same to him personally in the county and state aforesaid.

LESLIE LUPTON.

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Sworn and Subscribed this }
18th day of February A. D. }
1885, before me.

B. A. VAIL,

M. C. C. of N. J.

A true copy,

G. S. DURYEE.

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Clerk.

Upon opening the matter this day to the court by Leslie Lupton, of counsel with the complainant, in the presence of the president of the defendant cor-

poration, and due proof being made of the service of the order to show cause heretofore granted herein, and it appearing to the court that the said defendants have suspended their ordinary business and are insolvent: —

It is on this nineteenth day of February in the year
 10 eighteen hundred and eighty-five ordered that the said rule to show cause be made absolute and that Benjamin A. Vail of the city of Rahway be and he hereby is appointed receiver with full power to demand, sue for, collect and receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action bills notes and property of any and every description belonging to the
 20 said The Woodbridge Clay Mining, and Refining Company at the time of its insolvency and to do and perform all the duties imposed upon him and required by law and especially by the act entitled An act concerning corporations, approved April seventh, eighteen hundred and seventy-five.

And it is further ordered that the said Benjamin
 A. Vail before entering upon his duties take the
 30 oath prescribed by law and give a bond to the chancellor with sufficient surety or sureties in the sum of ten thousand dollars conditioned for the faithful performance of his duties to be approved as to the form and security thereof by Gilbert R. Lindsay, Esq., one of the special masters of this court.

Respectfully advised,

A. V. VAN FLEET.

V. C.

THEODORE RUNYON.

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C.

A true copy,

G. S. DURYEE,

Clerk.

IN CHANCERY OF NEW JERSEY.

BETWEEN
 CATHERINE G. PHILLIPS,
 Compl't,

and

THE WOODBRIDGE CLAY MIN-
 ING AND REFINING COMPANY.
 Deft's.

*On Bill for
 Relief.* 10

Final Decree.

This cause coming on to be heard in the presence
 of Leslie Lupton, of counsel with the complainant, 20
 the said bill of complainant having been taken as
 confessed against the defendants, and the said com-
 plainant having been by this court ordered and
 directed to take depositions and other evidence and
 bring on the hearing of the case *ex parte*.

Whereupon the pleadings and proofs in said
 cause having been duly heard before the court, and
 it appearing by the pleadings and proofs in said
 cause that the said complainant is a stock-holder 30
 and creditor of the said corporation defendant, The
 Woodbridge Clay Mining and Refining Company.
 That the said corporation defendant began their
 business of mining and refining clay and manufact-
 uring fire brick upon their premises, in the city of
 Perth Amboy, in the county of Middlesex, in the
 month of December, in the year eighteen hundred and
 eighty-one, and continued to carry on their said
 business until the tenth day of December, in the 40
 year eighteen hundred and eighty-four, when they
 suspended their ordinary business for want of funds
 to carry on the same and became insolvent, and
 that they could not resume their business in a short

time with safety to the public and advantage to their stockholders.

And it further appearing that a writ of injunction issued out and under the seal of this court, directed to the said The Woodbridge Clay Mining and Refining Company, their officers, servants and agents,
 10 enjoining them and restraining them and each of them from receiving any debts due to the said corporation, and from paying and transferring any moneys or effects of the said corporation, and from continuing their said business ; and it further appearing that B. A. Vail, Esquire, was appointed the receiver of the said defendant corporation, with full power to do and perform all the duties imposed upon him and required by law thereby, and especially by an act entitled
 20 "An act concerning corporations," approved April seventh, eighteen hundred and seventy-five. And the chancellor, being of the opinion that the complainant is equitably entitled to have what is justly due to her, and the other stockholders and creditors of the said corporation defendant, from the said corporation paid to them, and to a decree that the said corporation defendant is insolvent and to the appointment of a receiver, therefore according to the form of the statute in such case made and
 30 provided :—

It is therefore on this twenty-first day of November, in the year eighteen hundred and eighty-five, by His Honor, Theodore Runyon, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said chancellor doth by virtue of the power and authority of this court, hereby order, adjudge, and decree that the said corporation defendant, The Woodbridge Clay Mining and Refining
 40 Company is an insolvent corporation, and that it became insolvent on the tenth day of December, in the year eighteen hundred and eighty-four, and that it should be wound up as an insolvent corporation,

and to that end the injunction issued in this cause be, and the same is hereby made absolute, and that the said company, their officers, agents, and servants, desist and refrain from receiving any debts due to the said corporation, and from paying and transferring any moneys or effects of the said corporation, and from carrying on their said business, 10 and that the said B. A. Vail, the receiver heretofore appointed in this cause for the said corporation defendant, continue and proceed to fully discharge the duties of his said office, according to the rules and practice of this court and the statutes in such case made and provided.

And it is further ordered, adjudged, and decreed, that the said complainant may be at liberty to apply to this court for further direction as she may be advised. 20

Respectfully advised,

A. V. VAN FLEET, V.C.

THEODORE RUNYON, C.

A true copy.

G. S. DURYEE, Clerk.

IN CHANCERY OF NEW JERSEY.

10	BETWEEN CATHERINE G. PHILLIPS, Compl't, and THE WOODBRIDGE CLAY MIN- ING AND REFINING COMPANY, Deft's.	} <i>On Bill, &c.</i> } <i>On Petition of James Jameson.</i>
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20 Benjamin A. Vail, the receiver appointed in the above stated cause, hereby appeals from an order made in said cause on the sixteenth day of November, eighteen hundred and eighty-five, on the petition filed by James Jameson, directing the said Receiver to pay to said James Jameson the sum of nine hundred and twenty-four dollars and fifty-five cents, with costs, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

30 EPHRAIM CUTTER,
 Solicitor for and of Counsel with
 Benjamin A. Vail, Receiver.

Dated: NOVEMBER 17, 1885.

I conceive there is good cause for appeal in the abovesstated cause from the order above mentioned.

40 EPHRAIM CUTTER,
 Of Counsel with Benjamin A. Vail, Receiver.

A true copy :

G. S. DURYEE,

Clerk.

Service of a certified copy of the within notice of appeal is hereby acknowledged this 28th day of November, A. D., 1885.

C. C. HOMMANN,

Solicitor of

James Jameson, Petitioner. 10

To the Honorable the Court of Errors and Appeals in the last resort in all causes :

The humble petition of Benjamin A. Vail, Receiver of the Woodbridge Clay Mining and Refining Company, the appellatant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the sixteenth day of November, in the year one thousand, eight hundred and eighty-five, in a cause wherein Catharine G. Phillips is complainant, and The Woodbridge Clay Mining and Refining Company are defendants, said order being made upon a petition filed in said cause by James Jameson, against this petitioner, the receiver appointed in said cause, in this respect, to wit : that the said order directs that this petitioner should pay to the said James Jameson the sum of nine hundred and twenty-four dollars and fifty-five cents, the proceeds of the sale made by this petitioner of certain goods and chattels which were covered by a chattel mortgage held by the said James Jameson, with costs. 30 40

And your petitioner humbly appeals from that part of the order of the chancellor, which orders as aforesaid, upon the ground that the same is erroneous

for that it was shown by the evidence on the hearing of said petition that the Woodbridge Clay Mining and Refining Company, of which this petitioner is the receiver, at the time of the execution of said mortgage was insolvent, and that this fact was known to said Jameson, and by reason thereof the said company had no power or right to execute the said mortgage, and that the same is utterly null and void as to creditors, and the said proceeds of sale should be retained by this petitioner and distributed under the direction of the Court of Chancery, to the creditors of said company. And your petitioner also appeals from that part of said order which orders as aforesaid, upon the ground that the same is erroneous, for that the sum of one hundred and seven dollars and eighty cents, which was paid to the said James Jameson by the treasurer of said company, on the seventeenth day of February, eighteen hundred and eighty-five, should have been deducted from any sum which this petitioner was bound to pay to the said Jameson on account of the proceeds of said sale; and that the said order is, for other reasons, unjust and oppressive to this petitioner.

Your petitioner, therefore, prays that the said order 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.

EPHRAIM CUTTER,

Solicitor for and of Counsel with Appellant.

Service of a certified copy of the within petition is hereby acknowledged this 28th day of November, A. D., 1885.

C. C. HOMMANN,

Solicitor of

James Jameson, Petitioner.

NEW JERSEY - COURT OF ERRORS AND
APPEALS.

Between

BENJAMIN A. VAIL, RECEIVER
OF THE WOODBRIDGE CLAY
MINING AND REFINING Co.,

10

Appellant,

On Appeal.

and

JAMES JAMESON,

Respondent.

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The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that an order was, on the sixteenth day of November last past, made and entered 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, this respondent prays to refer thereto when the same shall be produced. 30

And this respondent is advised and believes that the said order is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

C. C. HOMMANN,

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Solicitor of Respondent.

N. C. J. ENGLISH,

of Counsel.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CATHERINE G. PHILLIPS,

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Complainant,

and

THE WOODBRIDGE CLAY MIN-
ING AND REFINING COM-
PANY,

Defendants.

On Petition, &c.

20 To His Honor Theodore Runyon, chancellor of
the state of New Jersey :

The petition of James Jameson, of the city of
Reading, county of Berks and state of Pennsyl-
vania, respectfully showeth that your petitioner is
a mortgage creditor of the defendant corporation, in
afore stated cause, by virtue of a certain indenture
of mortgage of goods and chattels of said defendant
30 dated on the twenty-seventh day of September, A.
D. eighteen hundred and eighty-four, executed by
the president and witnessed by the secretary of
said corporation, and recorded in the clerk's office
of Middlesex County on the first day of October
last past in Liber No. 3 of chattel mortgages on
pages 424, &c. ; conditioned to secure the payment
of such promissory notes to an amount not exceed-
ing six thousand dollars as have been or may here-
40 after be made by the defendant to the order of any
person or persons and indorsed by your petitioner
as security : and that there is now due on said
mortgage the sum of five thousand five hundred and
sixty-five dollars and fifty-six cents (\$5,565.56).

And your petitioner further showeth unto your Honor that on the seventeenth day of February last past, by virtue of an order of this honorable court the state's writ of injunction was issued against the defendant corporation, and by a further order made in that behalf on the nineteenth day of February last past Benjamin A. Vail, Esquire, was appointed receiver to take charge of the effects of said defendant corporation, and that on the eighth day of July, last past, the said receiver, by virtue of the power and authority in him vested, did sell at public vendue, as of the goods and chattels of the defendant all the goods and chattels in his possession which were embraced in the above mortgage; having first obtained from your petitioner his authority to sell all the right, title and interest he had or might have by reason of the lien of his said mortgage.

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And your petitioner further showeth unto your Honor that the said receiver now hath in his possession the sum of nine hundred and twenty four dollars and fifty-five cents (\$924.55) received from the sale of the said mortgaged goods and chattels.

Your petitioner therefore prays that an order of this court may be made, directing the said receiver to pay over to your petitioner the said sum of nine hundred and twenty-four dollars and fifty-five cents, received from the sale of said mortgaged goods and chattels, or such order as to your Honor shall seem proper.

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And your petitioner will ever pray, etc.

Dated Aug. 14th., 1885.

C. C. HOMMANN,

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Sol'r,

and N. C. J. ENGLISH,

of counsel.

NEW JERSEY: ss—

James Jameson, the petitioner in the foregoing petition named being duly sworn, on his oath saith, that the facts, matters and things therein set forth are true, and so far as they relate to the acts of any other person or persons he believes them to be true;

- 10) that he is the mortgagee as therein set forth, that there is due on said mortgage the sum of five thousand five hundred and sixty-five dollars and fifty-six cents; that the goods and chattels mentioned in said mortgage were sold by the receiver, for which he received the sum of nine hundred and twenty-four dollars and fifty-five cents, which amount he, the said receiver, still retains in his possession.

20)

JAS. JAMESON.

Sworn and subscribed before me at Perth Am-)
boy this 20th day of August, A. D., 1885. (

JNO. W. BEEKMANN,

M. C. C.

30)

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IN CHANCERY OF NEW JERSEY.

BETWEEN

CATHERINE G. PHILLIPS.

Compl't

and

THE WOODBRIDGE CLAY MIN-
NING AND REFINING COM-
PANY.

Def'ts.

In petition etc. 10
*Order to show
cause.*

This matter being opened to the court by C. C. Hommann, solicitor of James Jameson, the petitioner, a mortgage creditor of the defendant in above caues, in the presence of Benjamin A. Vail, Esquire, the receiver etc., of said defendant. It is on this twenty-eighth day of September A. D. eighteen hundred and eighty-five, ordered that the said receiver do show cause on Monday the twelfth day of October next, why he, the said receiver, should not pay over to the petitioner, James Jameson, or his solicitor, the amount in his hands received from the sale of the goods and chattels of said defendant, embraced in the mortgage of said petitioner. 20 30

Respectfully advised

A. V. VAN FLEET,

V. C.

THEODORE RUNYON,

C. 40

A true copy.

G. S. DURYEE,

Clerk.

IN CHANCERY OF NEW JERSEY.

10 BETWEEN
 CATHERINE G. PHILLIPS,
 Complainant,

and

THE WOODBRIDGE CLAY MINING
 AND REFINING COMPANY,
 Defendants.

On Bill, &c.

*Answer to Peti-
 tion.*

20 The answer of Benjamin A. Vail, the receiver appointed in the above stated cause to the petition of James Jameson, petitioner.

This respondent for answer unto the said petition, answering says, that he admits that a mortgage was executed to said petitioner by the Woodbridge Clay Mining and Refining Company on or about the twenty-seventh day of September, eighteen hundred and eighty-four, of the date and purport mentioned
 30 in said petition, and that the same was duly proved and recorded in the office of the Clerk of the County of Middlesex, as stated in said petition; and this respondent admits that he was appointed receiver of said company on the nineteenth day of February last, the said company having been adjudged by this honorable court to be insolvent; and this respondent also admits that on the ninth day of July last past he sold at public vendue certain of
 40 the goods and chattels embraced in said mortgage, having first obtained from said James Jameson his authority to sell all the right and title therein which he had or might have by reason of the lien of said mortgage. And this respondent further answering

says that he now has in his possession the sum of nine hundred and twenty-four dollars and fifty-five cents, received from the sale of the said goods and chattels; and this respondent further says that he neither admits nor denies that the amount alleged in said petition is due to said petitioner upon the said mortgage, but leaves him to make such proof of 10
said amount as he may be able.

And this respondent further answering says that he is informed, and believes, that at the date of the execution of said mortgage by said company, and for a considerable time previous thereto, the said company was insolvent, and that this fact was well known to the said James Jameson at the time of the execution of said mortgage; and this respondent is further informed, and believes, that at the time said 20
mortgage was given said Jameson had already indorsed notes for the accommodation of said company to the amount of four thousand dollars, he afterwards becoming indorser for two thousand dollars additional, and that said mortgage was made and executed on account of the insolvency of said company, and for the purpose of securing and preferring said Jameson as to his liability upon the notes already indorsed by him. 30

And this respondent further answering says, that, as shown by the books of said company, on the seventeenth day of February last past, the day upon which the injunction was granted by this honorable court, restraining the said company from further carrying on its business, the sum of one hundred and seven dollars and eighty cents was paid to said Jameson for and on account of the amount due him upon the said 40
mortgage; and this respondent believes that said Jameson and the officers of said company at the time of said payment well knew that the said com-

pany was insolvent, and that application had been made to this honorable court for the appointment of a receiver. And this respondent further answering says, that the assets of said company now in his hands are wholly inadequate and insufficient to pay and satisfy the debts of said company. And

10 this respondent claims and insists that, by reason of the said insolvency of said company, so known to said Jameson as aforesaid, and even without such knowledge on his part, the said company had no legal right or authority to execute the said mortgage, or any conveyance of its property, and that the said mortgage is illegal, null and void as to this respondent and the creditors of said company, and that this respondent should not be ordered to

20 pay over to the said petitioner the said proceeds now in his hands as aforesaid, but that the same should be retained and distributed by him under the direction of this honorable court; and this respondent further insists, that the said payment of one hundred and seven dollars and eighty cents, so made as aforesaid to said Jameson, even if not made after the granting of the said injunction, was illegal and void as to creditors, and that the said

30 Jameson should be ordered to repay and return the same to this respondent, and that the same should be deducted from the proceeds of said sale now in the hands of respondent, if this respondent is bound to pay said proceeds to said Jameson.

All which facts, matters and things this respondent is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

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EPHRAIM CUTTER,
Solicitor for and of Counsel with
B. A. VAIL,
Receiver, &c., Respondent.

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

BENJAMIN A. VAIL, Receiver of the Woodbridge Clay Mining and Refining Company, the respondent in the above answer mentioned, being duly sworn, on his oath saith, that the matters and things set forth in said answer, so far as relates to his own 10 acts and deeds, are true, and so far as relates to the acts and deeds of others, he believes them to be true.
 B. A. VAIL.

Sworn and subscribed before me, this }
 19th day of October, A. D. 1885. }
 LESLIE LUPTON,
 Master in Chancery of New Jersey.

A true copy.

G. S. DURYEE,

Clerk.

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IN CHANCERY OF NEW JERSEY.

	BETWEEN	}	<i>On bill, etc.</i>
10	CATHERINE G. PHILLIPS,		
	Compl't,		
	and		
	THE WOODBRIDGE CLAY MIN-		
	ING AND REFINING COM-		
	PANY,		
	Def'ts.		

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Upon hearing the petition of James Jameson a mortgage creditor of the defendant corporation it is ordered that the receiver etc., of said defendant pay over to the said petitioner or his solicitor the sum of nine hundred and twenty-five dollars and fifty-five cents, received from the sale of the goods and chattels mentioned in said mortgage and sold by said receiver, together with the petitioner's costs to be taxed.

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Dated November 16, 1884.

Respectfully advised

A. V. VAN FLEET,

V. C.

THEODORE RUNYON,

C.

40

A true copy,

G. S. DURYEE,

Clerk.

The following affidavit was made on behalf of petitioner [at the hearing of the rule to show cause issued on the above petition, said affidavit having been duly served upon the solicitor of the Receiver.

IN CHANCERY OF NEW JERSEY.

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BETWEEN

CATHERINE G. PHILLIPS,

Compl't,

and

THE WOODBRIDGE CLAY MIN-
ING AND REFINING COM-
PANY,

Defendants.

On Bill, etc.

20

Be it remembered that on this tenth day of November, A. D. one thousand eight hundred and eighty-five, before me James A. O'Reilly a commissioner of deeds for the State of New Jersey, residing in the city of Reading in the state of Pennsylvania, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally came James Jameson of the said city of Reading, who being by me duly sworn did depose and say.

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That the said The Woodbridge Clay Mining and Refining Company are indebted to him in the sum of four thousand seven hundred and thirty-three dollars and fifty-six cents, being the balance due upon two certain promissory notes, with interest, drawn by the said Woodbridge Clay Mining and Refining Company to the order of deponent payable at The Keystone National Bank of Reading,

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Pennsylvania, and indorsed by deponent: one dated Nov. 25, 1884, payable three months after date for the sum of three thousand dollars; and one dated Dec. 31, 1884, payable sixty days after date for the sum of two thousand dollars; which said notes after such indorsement were negotiated
 10 by the said company for their benefit, and both of which said notes were paid by deponent on the tenth day of February, A. D. 1885, to said bank as appears by indorsement thereon. That of said notes the one dated Nov. 25, 1884, for three thousand dollars was given in renewal of a note indorsed by deponent for the accommodation of said company dated Sept. 23, 1884, for three thousand dollars drawn by the said company to the order of deponent
 20 and at the time of said renewal held by the said Keystone National Bank. That said note of Sept. 23, 1884, for three thousand dollars was given in renewal of a note indorsed by the deponent for the accommodation of said company dated July 22, 1884, for two thousand dollars; and also in renewal of a note indorsed by deponent for the accommodation of said company dated July 22, 1884, for five hundred dollars drawn by said company to the order
 30 of said deponent, and at the time of said renewal held by the said Keystone National Bank, and that the balance of the said three thousand dollar note, to wit, five hundred dollars was paid over into the treasury of the said company on or about the 27th day of September, A. D. 1884.

That the other note dated Dec. 31, A. D. 1884, for two thousand dollars was given in renewal of a note indorsed by deponent for the accommodation of said
 40 company dated Sept 29, A. D. 1884, for two thousand dollars drawn by said company to the order of said deponent and at the time of said renewal held by the said Keystone National Bank. That the proceeds of this note, to wit, two thousand dollars

was paid into the treasury of said company on the day it was drawn.

That in addition to the above indebtedness of said company to this deponent, your deponent is liable on two promissory notes as indorser for the accommodation of said company, to wit, one dated October 23, A. D. 1884, for one thousand dollars now held by one Solomon Close, the other dated December 5, A. D. 1884, for five hundred dollars, both of which are drawn by the said company to the order of your deponent and now held by said Solomon Close. 10

And deponent further saith that the originals of said notes are now in the possession of Benjamin A. Vail, Esquire—the Receiver, etc., and that the copies hereto annexed are true copies of the said originals with the indorsements thereon. 20

And deponent further saith that he has received from the said The Woodbridge Clay Mining and Refining Company the sum of four hundred and ninety-one dollars and fifty-four cents, in part payment of the full amount due on said notes and no more, leaving the balance of four thousand seven hundred and thirty-three dollars and fifty-six cents as aforesaid still due and payable. 30

That said notes were secured to deponent by a certain indenture of chattel mortgage dated September 27, A. D. 1884, as appears by his petition to this honorable court dated August 14, A. D. 1885, and filed October 1, A. D. 1885.

And further deponent saith not. 40

JAS. JAMESON.

In testimony whereof I have hereunto set my

hand and affixed my seal of office the day and year first above written.

JAMES A. O'RIELLY,

A Commissioner of Deeds for the
State of New Jersey.

10

L. S.

Copies of Notes referred to in above affidavit.

\$2,000

Reading, December 31, 1884.

Sixty days after date we promise to pay to the order of James Jameson, two thousand dollars at the Keystone National Bank of Reading, Pa.

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Without defalcation.

Value received

Woodbridge Clay M. & R. Company

per W. H. Livingood, Treas.

Credit drawer

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JAMES JAMESON.

Endorsed

JAMES JAMESON.

Reading, Pa., Feby. 10, 1885, Received of James Jameson two thousand dollars in payment of the within note.

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JACOB HALL,

Cashier.

(2)

\$3,000.

Reading, Nov. 25, 1884.

Three months after date, we promise to pay to the order of James Jameson, three thousand dollars at the Keystone National Bank, of Reading, without defalcation, value received.

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WOODBRIDGE CLAY M. & R. Co.

Credit drawer.

JAS. JAMESON.

Endorsed

JAMES JAMESON.

Reading, Pa., Feb'y 10, '85.

Received of James Jameson, three thousand 20 dollars, in payment of the within note.

JACOB HALL,

Cashier.

(3)

\$1,000.

Reading, Pa., Oct. 23, 1884.

Ninety days after date, we promise to pay to the order of James Jameson, one thousand dollars at 30 the Keystone Nat. Bank, for value received.

WOODBRIDGE C. M. & R. Co.

Endorsed

JAS. JAMESON.

I hereby waive, demand, protest, and notice.

Reading, Pa., Jan. 26, '85.

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Received from Sol. Close, one thousand dollars, for the within note.

JACOB HALL,

Cashier.

(4)
\$500. Reading, Pa., Dec. 5, 1884.

Sixty days after date, we promise to pay to the order of James Jameson, five hundred dollars, at the Keystone National Bank, of Reading, for value
10 received.

WOODBRIDGE C. M. & R. Co.
per W. M. H. LIVINGOOD, Treas.

Endorsed

JAMES JAMESON.

Feb. 6, 1885. Paid by Sol. Close.

20 J. B. KAUCHER,
Cashier.

Reading, Nov. 10, 1885. JAS. JAMESON.

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The following are the affidavits read on behalf of the Receiver on the said hearing.

IN CHANCERY OF NEW JERSEY.

BETWEEN
CATHERINE G. PHILLIPS,
Compl't.

and

THE WOODBRIDGE CLAY MIN-
ING AND REFINING COMPANY,
Defd'ts.

On Bill, &c.

On Petition.

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MIDDLESEX COUNTY, SS.

SIMEON G. PHILLIPS, of full age, being duly sworn on his oath, saith that he was the president of the Woodbridge Clay Mining and Refining Company at the time of the appointment of the receiver in this cause; that on the twenty-seventh day of September, eighteen hundred and eighty-four, the date of the execution of the chattel mortgage by said company to James Jameson, the financial condition of said company was not materially different in the judgment of deponent, from what it was at the time of the appointment of said receiver; that the said company at the date of said mortgage was indebted for labor claims alone to the amount of about twelve hundred dollars, which it was unable to pay; that on or about the twentieth of December following the giving of said mortgage the said company was compelled to suspend business, and did no further manufacturing until the appointment of a receiver in February following; that on said twen-

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ty-seventh day of September, the real estate of said company was encumbered to the amount of sixteen thousand dollars, besides interest due thereon. Such encumbrances consisting of four mortgages, one for six thousand dollars, held by Eliza Jane Smith, one for one thousand dollars, held by Mrs. Maria H. Phillips, one for three thousand dollars, held by Mrs. Maria H. Phillips, and one for six thousand dollars, held by Anna H. Livingood ; that the real estate then owned was the same as that sold by the said receiver ; that all the manufactured brick and washed clays on hand at the date of said mortgage executed to Jameson, were included therein ; that after said date the amount of goods manufactured was about equal to the amount sold, and that the quantity of fire clays on hand at the date of the suspension of the company was about the same as that on hand at the date of the execution of said mortgage ; that the indebtedness of the company was not materially increased after the date of said mortgage ; that the negotiations between said company and said Jameson in relation to said mortgage were carried on through William H. Livingood, the son-in-law of said Jameson ; that said Livingood was also the treasurer of the company and its counsel ; that said Jameson did not personally conduct any negotiations with deponent or said company, but acted entirely through said Livingood ; that said Livingood had no authority to agree for the giving of said mortgage without the consent of deponent ; that a copy of a letter received by deponent from said Livingood, on or about the 22nd day of September, 1884, is hereto annexed ; that on or about the 15th day of February, 1885, and before the appointment of the receiver in said cause, 24,000 fire brick were sold at public sale by one Solomon Close, under a chattel mortgage held by him, dated December 19, 1884, the amount realized

from said brick being four hundred and fifty-six dollars, being at the rate of nineteen dollars per thousand; that the books of account of said company now in possession of said receiver, and which were examined by Robert C. Brewster in preparing the affidavit made by him in this proceeding, were kept at the principal office of the company in Perth Amboy, and the entries were made therein under the supervision of deponent; that said books correctly represent the financial condition of said company on the 27th day of September, 1884, and afterward, as to liabilities and accounts receivable, except that there were about twenty-one hundred dollars of book accounts payable in addition to the above mentioned labor claims, which had not been entered on said books, and that some of the accounts entered on said books as amounts due the company had offsets against them which would reduce the amount actually due the company; that the account of S. G. Phillips, now held by Catherine G. Phillips, is stated in said books to amount to \$3,968.96, whereas the real amount due was \$2,830.47, there being credits which should have been entered against said account as it appears in the books; and deponent further saith that a claim of \$4,238 has been presented to said receiver by William H. Livingood which does not appear on said books as a debt due by the company, but that deponent does not admit the legality or validity of said claim.

SIMEON G. PHILLIPS.

Sworn and subscribed before me, this)
12th day of November, A. D. 1885.)

Interlineation on last line of second page before execution.

D. P. CARPENTER,
Justice of the Peace.

SECRETARY'S OFFICE, WOODBRIDGE CLAY MINING AND REFINING COMPANY.

Reading, Pa., Sept. 21, 1884.

Works, Spa Springs, N. J.

10 Mr. S. G. Phillips.

DEAR SIR.—I had arranged my business so as to leave for Pottstown, Phoenixville, Philadelphia, and Burlington, to sell bricks and be at Spa Springs on Friday to pay the men. Your curt refusal to secure the company's indorser, who will be obliged to pay \$3,750 on next Tuesday, the 23d (unless the same be renewed), imperatively demands an immediate suspension of all our works. Do this at once.

20 "Whom the gods would destroy, they first make mad."

Very truly yours,

WM. H. LIVINGOOD.

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IN CHANCERY OF NEW JERSEY.

BETWEEN

CATHERINE G. PHILLIPS,
Complainant,

and

THE WOODBRIDGE CLAY MINING
AND REFINING COMPANY,
Defendants.

10

On Bill, etc.

UNION COUNTY, SS.

ROBERT C. BREWSTER, of full age, being duly 20
 sworn on his oath, saith that he is by pro-
 fession a book-keeper and accountant; that
 he has made an examination of the books of
 account of the Woodbridge Clay Mining and
 Refining Company with a view to ascertaining the
 financial condition of the said company on the
 twenty-seventh day of September, 1884; that
 according to said books of account deponent finds
 that the indebtedness of said company, not including 30
 the real estate mortgages, amounted to thirteen
 thousand seven hundred and eighty dollars and
 fifty-eight cents, consisting of five thousand two
 hundred and fifty-seven dollars and thirty-two cents
 of book accounts against the said company, and
 eight thousand five hundred and twenty-three dol-
 lars and sixteen cents of bills payable, a schedule
 of which said accounts and bills payable is hereto
 annexed and forms part of this affidavit; that to 40
 said amount should be added twelve hundred
 dollars which deponent is informed was due on that
 date to the laborers in the employ of said company;
 that of the assets shown by the books of said com-

pany on said date there were twenty-four hundred and thirty-five dollars and seventy cents of book accounts, of which eight hundred and eighty dollars and seven cents have since proved to be uncollectible or to have offsets against them; and if the real estate be valued at five hundred dollars above
 10 incumbrances, and the stock of brick, clay, and other personal property be valued at fifty-seven hundred and forty-seven dollars, the amount at which it was valued when the inventory was made by the receiver in said cause of the property found by him, the excess of liabilities over the assets on said 27th day of September, 1884, would be seven thousand one hundred and seventy-seven dollars and eighty-five cents; that according to the books
 20 of said company the liabilities of said company do not appear to have materially increased between the 27th day of September, 1884, and the 20th day of December 1884, on or about which latter date the said company suspended business, the amount of sales by said company being about equal to the amount incurred for expenses.

R. C. BREWSTER.

30 Sworn and subscribed before me this 3d)
 day of November, A. D. 1885. }

LESLIE LUPTON.

Master in Chancery of New Jersey.

ASSETS SEPT. 27, 1884.

BOOK ACCTS.

40	Chas. Anness & Sons,	19.47
	F. W. Meeker,	2.82
	P. Convery,	1141.98
	Wm. Fleutke & Co.,	25

Albert Martin,	12.65	
Henry Maurer,	3.30	
J. Ogden & Son,	79.29	
Jas. Valentine,	28.20	
John Cooper,	2.58	
A. A. Robins,	184.75	
Geo. D. Festitices,	97.23	10
D. P. Carpenter Jr.,	1.25	
Dowd Bros,	150.00	
Gloucester Iron Works,	125.00	
Allentown Rolling Mill,	144.00	
Jas. J. Livingood,	418.18	
	<hr/>	
Total,	2435.70	

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LIABILITIES.

BOOK ACCTS. PAYABLE.

Cutter & Vorhees,	412.72	
H. Cook,	44.79	30
Hall & Son,	39.34	
Wm. Luckhurst,	.61	
J. H. Moore,	69.26	
Birkett & Paterson,	1.10	
Wm. Adair	3.56	
Weston Dodson & Co.	237.87	
F. F. Anness,	34.21	
W. H. Livingood,	2.00	
S. G. Phillips,	3968.96	40
Westmoreland Coal Co.,	66.90	
Nat. Bk. New Jersey	376.00	
	<hr/>	
Total,	5257.32	

BILLS PAYABLE.

	F. F. Anness,	100.00
	E. C. B. & Co.,	339.16
	F. Moore,	113.69
	E. C. B. & Co.,	146.98
10	R. W. Glesson,	144.29
	W. H. Berry & Co.,	457.55
	Geo. Carnell,	126.25
	S. F. Allen,	138.52
	W. G. Herbert,	140.00
	Sol. Close,	500.00
	Valley Machine Co.,	116.72
	Z. H. Maurer,	200.00
	J. Jameson,	2000.00
20	“	3000.00
	“	1000.00
	Total,	<u>8523.16</u>

R. C. BREWSTER.

RECAPITULATION.

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ASSETS.

	Book Accts. Receivable	2435.70
	Less uncollectible offsets, etc.,	<u>880.07</u>
	Total,	1555.63
	Real estate estimated over incumbrances.	500.00
40	Stock & Material on hand inventoried by Receiver.	<u>5747.00</u>
	Total assets,	7802.63

LIABILITIES.

Book accts. Payable	5257.32	
Bills payable	8523.16	
Due for labor	1200.00	
	<hr/>	
Total,	14,980.48	10
Liabilities in excess of Assets,	7177.85	
	<hr/>	
Total,	14,980.48	

R. C. BREWSTER.

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IN CHANCERY OF NEW JERSEY.

10	BETWEEN CATHERINE G. PHILLIPS, Compl't, and THE WOODBRIDGE CLAY MIN- ING AND REFINING COMPANY, Deft's.	} <i>On Bill, etc.</i> <i>On Petition.</i>
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20 MIDDLESEX COUNTY, ss :

HENRY C. INGRAHAM, of full age, being duly sworn, on his oath, saith, that he resides at Woodbridge, in said county ; that he is engaged in the business of manufacturing fire-brick and drain-pipe, and in mining fire clays, being superintendent of the Salamander Works at Woodbridge aforesaid ; that he is acquainted with the value of fire-brick, fire clays, clay lands and factory buildings and machinery ; that deponent has frequently seen the factory, works, and clay lands of The Woodbridge Clay Mining and Refining Company, sold by the receiver in the above stated cause, and has estimated the value thereof ; that, in the judgment of the deponent, the value of the said real estate at the time of the sale by said receiver, or in September, 1884, did not exceed the sum of eighteen thousand, three hundred and sixty-four dollars, the amount of the encumbrances thereon, at the time of said sale ; and that in the judgment of deponent, the fire-brick fire clays, and other movable property mentioned in the inventory filed by said receiver, were valued

by said receiver in said inventory at a fair and reasonable sum, and that the value of the same would not exceed the sum of fifty-seven hundred and forty-seven dollars, the amount at which they were valued by said receiver.

H. C. INGRAHAM.

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Sworn and subscribed before me, this }
12th day of November, A. D. 1885. }

D. P. CARPENTER,
Justice of the Peace.

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MIDDLEBURY COUNTY, VERMONT.
HENRY C. INGRAHAM, of full age, being duly sworn on his oath, saith, that he resides at Woodbridge in said county; that he is engaged in the business of manufacturing fire-brick and stoneware, and in mining the clays being adjacent to the Salamander Works at Woodbridge; that he is acquainted with the value of the brick, fire clays, clay lands and factory buildings and machinery; that heponent has frequently seen the factory works and clay lands of The Woodbridge Clay Mining and Refining Company, sold by the receiver in the above stated cause, and has estimated the value thereof; that in the judgment of the deponent, the value of the said real estate at the time of the sale by said receiver, or in September, 1884, did not exceed the sum of eighteen thousand, three hundred and sixty-four dollars, the amount of the encumbrance thereon at the time of said sale, and that in the judgment of deponent, the fire-brick, the clays and other movable property mentioned in the inventory filed by said receiver were valued

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from the said William H. Livingood concerning the said application.

LESLIE LUPTON.

Sworn and subscribed this ninth day of }
November A. D., 1885 before me. }

G. R. LINDSAY,

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Master in Chancery of N. J.

THE WOODBRIDGE CLAY MINING AND REFRAINING COMPANY
NEW JERSEY
COUNTY OF UNION

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STATE OF NEW JERSEY
COUNTY OF UNION

Leslie Lupton of full age being duly sworn according to law on his oath saith that William H. Livingood the treasurer of the Woodbridge Clay Mining and Refraining Company and knowledge and notice from this deponent on the seventeenth day of February last past at Rahway in the county and state aforesaid that deponent was on the said day and immediately about to make application for an injunction restraining the said company from further carrying on its business and for the appointment of a receiver therefor as an insolvent corporation and that on the nineteenth day of February last past at the chambers of the vice-chancellor in Newark deponent was shown what purported to be and deponent verily believed to be a letter received by his Honor A. F. Van Fleet Esq. the vice-chancellor of this court

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IN CHANCERY OF NEW JERSEY.

BETWEEN

10 CATHERINE G. PHILLIPS,
Complainant, *On Bill, &c.,*

and

*On Petition.*THE WOODBRIDGE CLAY MINING
AND REFINING COMPANY,
Defendants.

20 UNION COUNTY, ss.

BENJAMIN A. VAIL, being duly sworn, on his oath saith, that he is the receiver appointed in the above stated cause; that on the first day of July, 1885, he sold at public vendue the real estate belonging to The Woodbridge Clay Mining and Refining Company for the sum of two hundred dollars, that being the highest price that could be obtained for the same, the same being sold subject to mortgages amounting to seventeen thousand and thirty dollars, including the interest due thereon, also mechanics' lien claims, amounting to seven hundred and thirty-four dollars and taxes amounting to six hundred and fifty dollars, making the total amount of incumbrances eighteen thousand three hundred and sixty-four dollars, said real estate consisting of the lot whereon the factory buildings are erected, containing two 90-100 acres of land, and two lots of clay-land containing about thirteen acres of land; that on the 8th day of July, 1885, deponent also sold all the personal property mentioned in the inventory filed in said cause, including 15,000 green brick

mentioned in said inventory, which had been burned and completed, for the sum of three thousand seven hundred and sixty-four dollars and sixty-one cents, that being the highest price that could be obtained for the same at public vendue; that part of the goods sold were covered at the time of sale by the chattel mortgage executed by said company to James Jameson on the 27th day of September, 1884; that both of the above sales were reported to this honorable court and duly approved.

B. A. VAIL

Sworn and subscribed before me, this)
11th day of November, A. D. 1885.)

LESLIE LUPTON,

Master in Chancery of New Jersey.

The above affidavits on the part of B. A. Vail, receiver, the respondent, together with the answer of said receiver, were read at the hearing of said petition, the same having been duly served on the solicitor of the petitioner five days before the said hearing, as appears by affidavit filed.

...of the Court of Errors and Appeals
...of the Court of Errors and Appeals
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