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NEW JERSEY COURT OF ERRORS AND APPEALS.

THOMAS N. McCARTER, JR., REC., ETC., <i>Defendant in Error,</i>	} <i>On Error to</i> <i>Essex Circuit Court.</i>	10
vs.		
GEORGE W. KETCHAM, <i>Plaintiff in Error.</i>		

BRIEF FOR PLAINTIFF IN ERROR.

The action is brought by the Receiver of an insolvent corporation, The Clinton Hill Lumber & Manufacturing Company, to recover from the defendant the amount of an alleged assessment made by the Receiver against the defendant as a stockholder of the corporation. 20

In proceedings in the Court of Chancery an order was made on the application of the Receiver directing him and authorizing him to assess, call and collect from certain parties a certain sum of money out of their respective subscriptions as incorporators and stockholders of the said corporation, which have not been fully paid up, and to enforce payment by suit if necessary; p. 55. 30

The order expressly provides that it is made without prejudice to the rights of the alleged stockholders to make any defence which they may have to any action which may be brought against them. The defendant signed a certificate of incorporation, p. 28, of the said Company and subscribed for five shares of stock. He never did any other act although he was elected a director of the Com- 40

pany; and he never attended any meeting of the directors or stockholders, and it does not appear that he was ever notified to do so.

10 In the answer of the stockholders to the Receiver's petition, the defendant with the others, alleges that the persons named in the certificate of incorporation attempted to form a corporation, but could not agree and the entire scheme was abandoned; and the original certificate was never filed in the office of the Secretary of State and was destroyed, p. 50. This allegation is borne out by the testimony in the case. The order directing the Receiver to assess the stockholders was not intended to be conclusive, and was made merely for the purpose of ascertaining the amount of money necessary to be raised; and is not even prima facie proof of the liability of any of the alleged
20 stockholders; see opinion of Vice-chancellor Emery, 19 Dick. 517.

This court held in the case of McCarter, Rec. vs. Ketcham, Jr., 43 Vr. 247, that the facts proved in that case showed the existence of a corporation *de facto*. It is admitted in this case, p. 14, that the Company became a corporation *de facto*.

30 THE MOTION FOR A JUDGMENT OF NON-SUIT FOR THE REASONS STATED SHOULD HAVE BEEN GRANTED.

1st. It was incumbent upon the plaintiff to prove the defendant's liability to pay for the stock subscribed for by him. The order of the Chancellor authorizing the Receiver to assess the stockholders is not conclusive and is not an adjudication of any liability whatever on the part of the alleged stockholders and was not intended to be any such adjudication. The evidence of the defendant's subscription is contained in the certificate of in-

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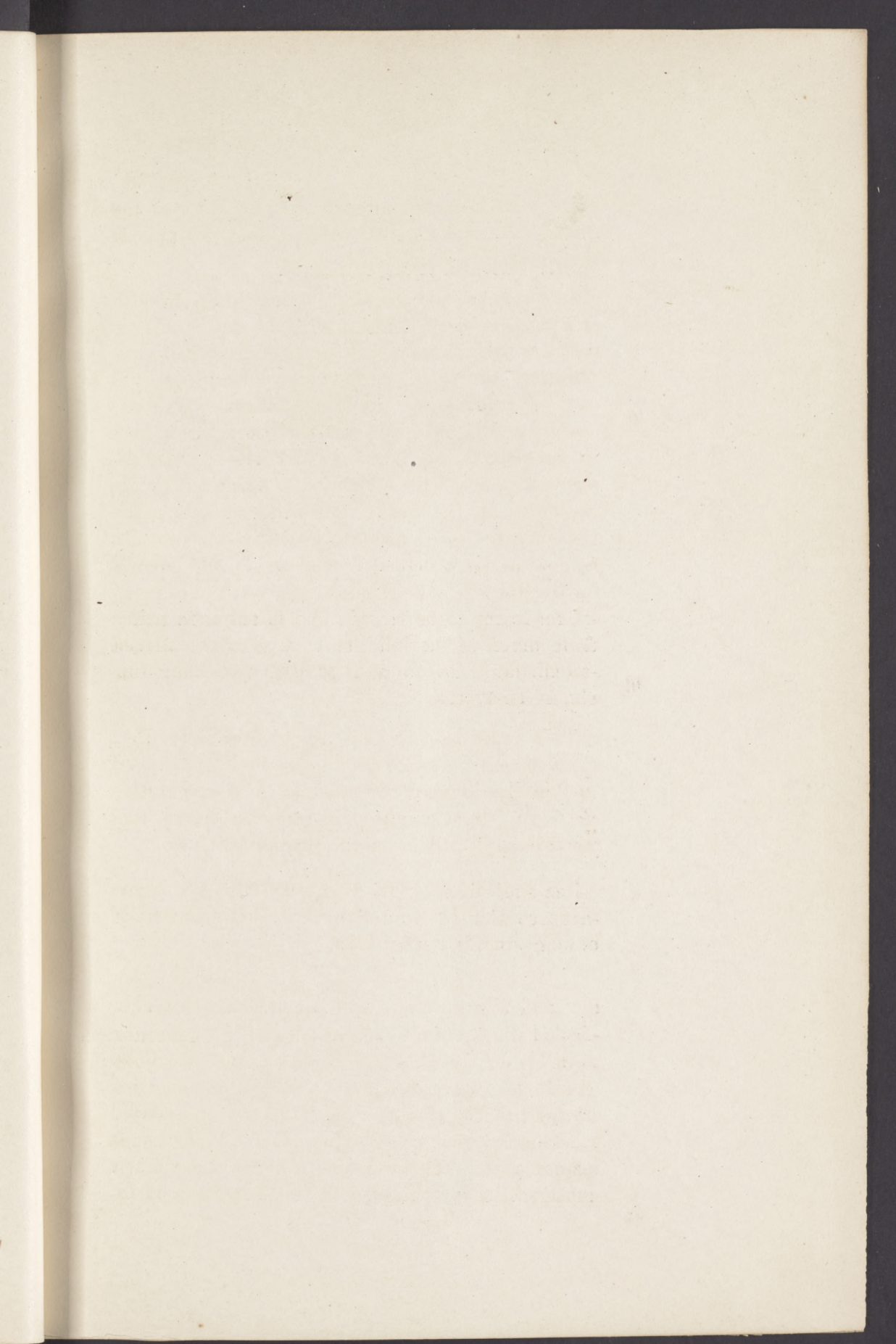
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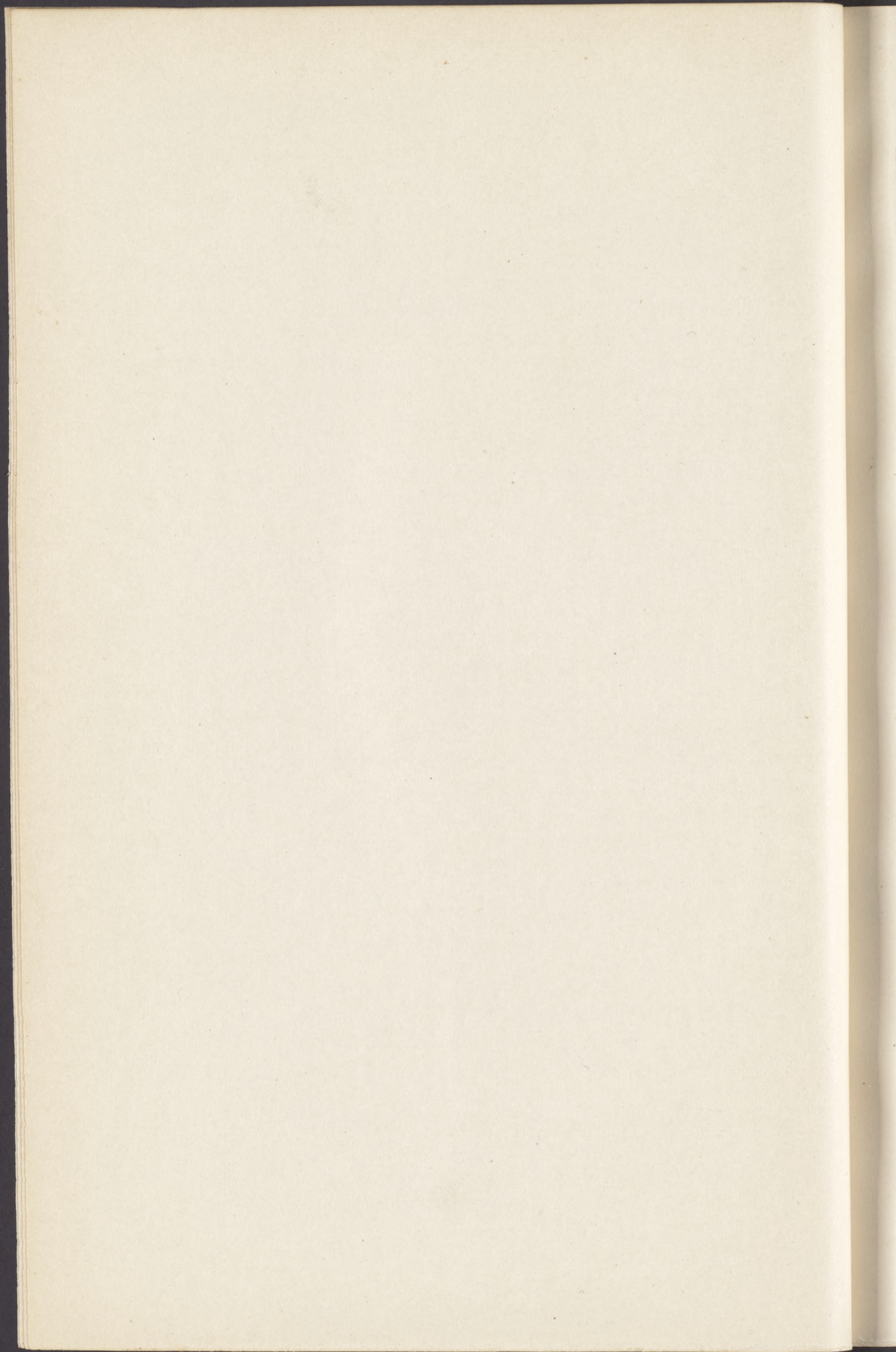
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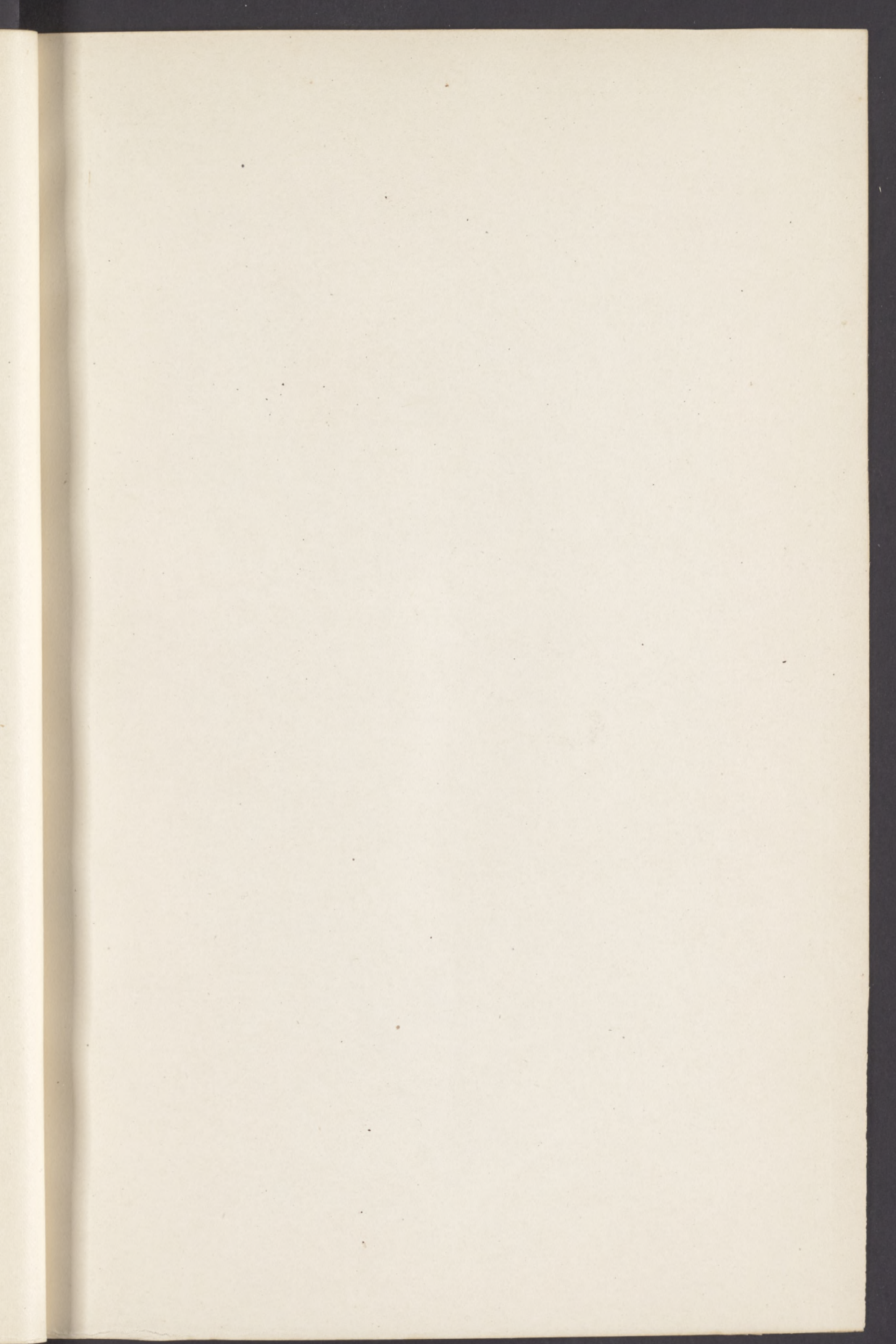
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New Jersey Court of Errors and Appeals

THOMAS N. MC CARTER, Receiver,
Defendant in Error,

vs.

GEORGE W. KETCHAM,
Plaintiff in Error.

Brief of James E. Howell on Behalf of Defendant in Error.

The litigation out of which the present suit grows was begun in 1894. At that time Strieby, Sprague & Company were creditors of F. D. Holloway, a retail lumber dealer. They obtained judgment against Holloway and on the return of the execution unsatisfied, they brought suit in Chancery to set aside a transfer which Holloway had made of all his stock of merchandise to the Clinton Hill Lumber and Manufacturing Company, on the ground that it was fraudulent as to his creditors. There was a decree for the complainant.

Strieby v. Clinton Hill Co. 29 Atl. Rep. 589.

Affirmed 7 Dick. 576.

At the foot of the decree an order was made appointing a receiver in that cause and upon his report that he could find no property, the Court of Chancery made a decree *in personam* in favor of Strieby, Sprague & Company ^{vs.} ~~and~~ the Clinton Hill Company, and ordered execution thereon. This execution was returned wholly unsatisfied.

The Clinton Hill Lumber and Manufacturing Company was organized under the laws of New Jersey on January 21, 1893. The certificate was signed by the defendant George W. Ketcham, among others. The capital stock was \$40,500. The defendant, George W. Ketcham, subscribed for five shares.

On January 23, 1893, Holloway made a bill of sale to The Clinton Hill Lumber and Manufacturing Company of all his stock of lumber in his lumber yard, his lease, building, improvements, good-will, removable fixtures and everything pertaining to his business. (Ex. P. 4, page 31). This transfer was accepted by the corporation as payment of an assessment of 40% on its capital stock.

Subsequently a bill was filed by the Cumberland Lumber Company and Strieby, Sprague & Company against The Clinton Hill Lumber and Manufacturing Company, alleging its insolvency and praying for the appointment of a receiver to wind up its affairs. Thomas N. McCarter was appointed receiver and is so acting. By his petition (Page 41), he reported to the court an insufficiency of assets to pay the debts of the corporation and alleged that the stockholders, including the defendant in the suit, had paid 40% of their subscriptions, and prayed that an accounting might be had of the amount necessary to pay the debts, and that he might have leave to assess the stockholders to that amount.

The stockholders were notified of this application and (including the defendant in the suit) filed an answer therein (Page 46). The petition came on for hearing before Vice-Chancellor Emery and is reported under the name of *Cumberland Lumber Co. v. Clinton Hill Lumber and Manufacturing Company*, in 19 Dick 517; S. C. 19 Dick. 521. A decree was made ordering an assessment (Page 52). An Assessment was thereupon made by the receiver (Page 58) and this action is brought for the purpose of collecting the assessment. The declaration is found on the decree and the assessment.

The pleas are :

1. General issue.
2. That The Clinton Hill Lumber and Manufacturing Company was never incorporated.
3. That the incorporators released each other.
4. Statute of limitations.

The errors assigned are as follows :

1. That the trial court admitted in evidence three papers called certificates of stock, (Ex. P. 5, page 32), and refused to strike the evidence from the record.
2. Because the Circuit Court refused to non-suit the plaintiff on the ground that he had not proved any liability on the part of the defendant on his stock subscription and had not proved an assessment made against the defendant by the Court of Chancery.
3. Because the Circuit Court overruled the following question— “Did you make any agreement to take stock before you signed the certificate of incorporation?”
4. Because the Circuit Court directed a verdict for the plaintiff.

I.

THE CERTIFICATES OF STOCK.

These were made by William S. Ketcham, Jr., the secretary of the corporation, and his own name and the name of his father were signed thereto by him.

One of the certificates certified that the defendant in this suit, George W. Ketcham, was the holder of two (2) shares of the stock, being 40% of the amount of the subscription. This was evidently in pursuance of the idea that the directors had that the Holloway lumber paid up 40% on all the subscriptions. However, the certificate is mere surplusage; he was a stockholder though he had no certificate. The certificate is evidence against him, because it shows the idea that the company had about the transaction between them.

II.

LIABILITY OF DEFENDANT.

The decree of the Court of Chancery (Page 52) fastens a liability on him from which he cannot escape. It adjudicates all the questions against him. The questions were all tried out before the Court of Chancery and the liability there once established cannot be evaded.

Hood v. McNaughton, 25 Vr. 425.

III.

THE AGREEMENT TO TAKE STOCK.

This objection is based upon the idea that there must have been or should have been a stock subscription agreement prior to the signing of the certificate of incorporation.

It makes little difference what agreement was entered into about the subscription prior to the signing of the certificate. The signature to the certificate is the subscription which the law recognizes, *L. 1896. P. 280. Sec. 8—J.* Besides, the defendant admitted (Page 22, l. 20) that he never saw any agreement in writing relating to stock in this corporation other than the certificate of incorporation.

IV.

THE DEFENSE.

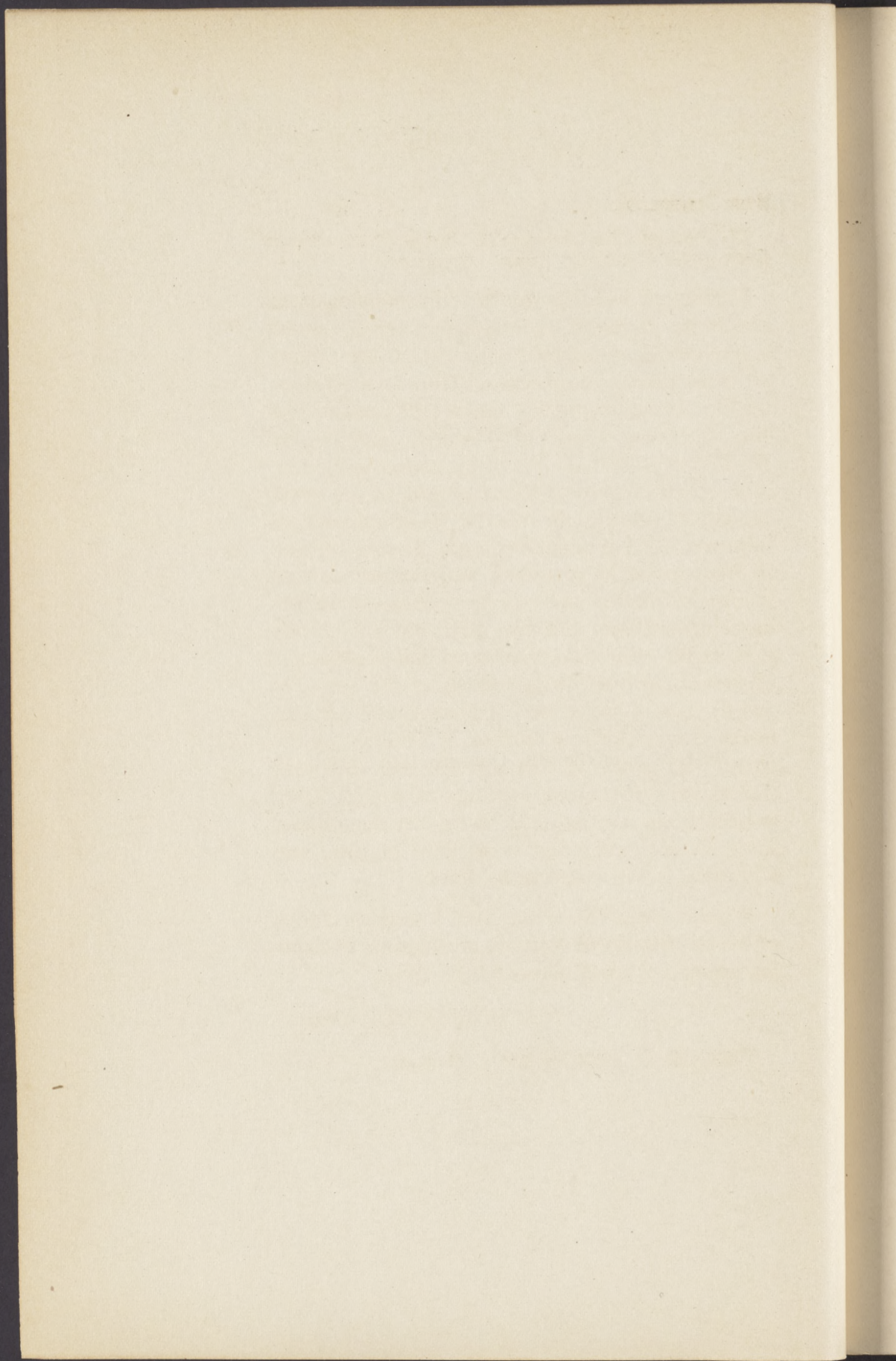
This consists of the evidence of George W. Ketcham, the defendant, only.

This is a summary of it—He subscribed for stock in The Clinton Hill Lumber and Manufacturing Company in Mr. McDonald's office. He does not remember when it was. He never received any certificate of stock. He never saw any stock book and did not sign any waiver of notice of the first meeting and never saw a waiver. He attended none of the meetings of the stockholders or directors, because he had no notice of them. He did not know that he was a director until months afterwards. He has never paid any portion of his subscription and never knew of any act on the part of the company until after it was in the courts. This certainly can be no defense.

JAMES E. HOWELL,
of Counsel.

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NEW JERSEY. ss.:

The State of New Jersey to the Judges of the Circuit Court of the County of Essex: Greeting:

Forasmuch as in the record and proceedings and also in the giving of Judgment in a certain action in our Circuit Court holden in and for the County of Essex before you, between THOMAS N. McCARTER, Jr., Receiver of the Clinton Hill Lumber and Manufacturing Company, Plaintiff, and George W. Ketcham, Defendant, in an action upon contract manifest error has intervened to the great damage of the said George W. Ketcham, and we being willing that the error, if any there be, should in due manner be corrected, and just and speedy justice done to the parties aforesaid in this behalf, do command you that you distinctly and openly send under your seals, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twenty-eighth day of May together with this writ, that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon for correcting that error what of right and according to law ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the 9th day of May, 1906.

S. D. DICKINSON, *Clerk.*

FRANK E. BRADNER, *Attorney.*

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.

ss:

10 I, Frederic Adams, Judge of the Circuit Court in and for Essex County, New Jersey, do hereby certify and return to the Court of Errors and Appeals the Court of last resort, the judgment, record and proceedings, together with all things touching and concerning the same, as by the within Writ to me directed I am commanded.

Witness my hand and the official seal of said Court and County the 26th day of May A. D. 1906.

FREDERIC ADAMS

(L. S.)

Circuit Court Judge.

20 Pleas before the Judge of the Circuit Court holden at Newark, in and for the County of Essex of the twenty-first day of November A. D. 1904.

ARTHUR HORTON, *Clerk.*

ESSEX COUNTY: ss.

30 GEORGE W. KETCHAM, the defendant in this suit, was summoned to answer to Thomas N. McCarter, Jr., Receiver of the Clinton Hill Lumber and Manufacturing Company, in an action upon contract, and thereupon the plaintiff by Coult, Howell & Ten Eyck, his attorneys, complains.

40 For that whereas, heretofore, to wit, on the twenty-fifth day of January, Eighteen hundred and ninety-three, at Newark in said County, the defendant and certain other persons were desirous of associating themselves together as a corporation for the purpose of manufacturing and selling sashes, doors, blinds and all planing mill and carpenters' supplies and to buy and sell lumber for the benefit of those who should become members of the said corporation, and afterwards, to wit, on the same day and year, in consideration thereof, for the purpose of effecting the said object the de-

fendant with William S. Ketcham, Sr., Frank D. Holloway, Edward E. Camfield and William S. Ketcham, Jr., made and subscribed a certain certificate of incorporation wherein and whereby they certified that they did associate themselves into a corporation under the provisions of law, and that they had assumed as the name to designate such corporation and to be used in its business and dealings "The Clinton Hill Lumber and Manufacturing Company," and that the place in this State where the business of such company should be conducted was the City of Newark in said County, and that the objects for which said company was formed were to manufacture and sell sashes, doors, blinds and all planing mill and carpenters' supplies and to buy and sell lumber, and that the total amount of the capital stock of said company was \$75,000, divided into 750 shares of the par value of \$100 each, and that the said company would commence business with \$40,500, divided into 405 shares of the par value of \$100 each, and that the names and residences of the stockholders and the number of shares of stock in said corporation held by each were as follows:

William S. Ketcham, Sr.,	100	Shares	
William S. Ketcham, Jr.,	100	"	
Edward E. Campfield,	100	"	
Frank D. Holloway,	100	"	
George W. Ketcham,	5	"	

and that the said company would commence business on the Twenty-third day of January, Eighteen hundred and ninety-three and terminate on the Twenty-third day of January, Nineteen hundred and forty-three, as by the said certificate of incorporation now on record in the office of the County Clerk of said County, reference being thereunto had, will more fully and at large appear.

And the plaintiff avers that the defendant at the time of subscribing to the said certificate of incorporation set opposite to his name, thereto subscribed, the number of five shares of said capital stock and agreed to pay therefore in cash at their par value whenever thereunto lawfully required, and that the said certificate of incorporation being so made as aforesaid, afterwards, to wit,

on the same day and year, in consideration thereof and of the aforesaid premises, the defendant undertook and then and there faithfully promised the said corporation to perform and fulfill the agreement contained in said certificate of incorporation in all things on his part and behalf to be performed and fulfilled, and although the said corporation has always from the time of the making and execution of the said certificate of incorporation well and truly performed and fulfilled the same according to the tenor and effect, true intent and meaning thereof, and although four hundred and five shares of the capital stock of the said company were subscribed for at the time of the defendant's subscription, and although the said corporation, relying upon the subscription of the defendant, and said other persons, did make large purchases of merchandise and lumber and did enter into contracts and subject itself to liabilities to a large amount, to wit, the sum of One thousand dollars, yet the plaintiff says that the defendant did not perform and fulfill his part of the said agreement so made by him in the said certificate of incorporation and did not and has not paid to said corporation the amount of his said subscription.

And the plaintiff avers that prior to the Ninth day of April, Eighteen hundred and ninety-five, the said corporation became insolvent and suspended its ordinary business for want of funds to carry on the same and that thereupon the Cumberland Lumber Company and other creditors of the said corporation filed their bill of complaint on the day and year last aforesaid in the Court of Chancery of this State, alleging, among other things, that the said company had become insolvent and had suspended its ordinary business for want of funds to carry on the same, and praying that a receiver might be appointed with full power and authority to demand, sue for, collect, receive and take into his possession all the goods and chattals, rights and credits, moneys and effects and other assets of the said corporation for the benefit of the creditors of the said corporation and that thereupon, on the Thirteenth day

of May, Eighteen hundred and ninety-five, the said Court of Chancery made an order in the said cause adjudging that the said corporation had suspended its ordinary business and was insolvent and appointing the plaintiff receiver thereof, with full power to demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books and papers, choses in action, bills, notes and property of every description belonging to the said corporation at the time of its suspension of business, and to do and perform all the duties imposed upon him and required by law as such receiver, and that he should take the oath prescribed by law and give bond to the Chancellor in the sum of Five thousand dollars, conditioned for the faithful performance of his duties to be approved by one of the Masters of said court. 10

And the plaintiff avers that he accepted such appointment, took the oath required by law and executed and filed in the Court of Chancery the bond required by the said order the same having been first approved by a Master in Chancery, and that the plaintiff thereupon became qualified to act as such receiver and took upon himself the burden of the administration of the estate of the said insolvent corporation. 20

And the plaintiff avers that in the month of November, Eighteen hundred and ninety-nine, upon notice to the said defendant the plaintiff made in due form of law a representation to the said Court of Chancery that claims against the said corporation aggregating Thirty-five hundred dollars, or thereabouts, had been presented to him and had been duly proved before him and had been allowed by him as such receiver, and that he as such receiver, had no money belonging to the said corporation from which he could obtain money with which to pay the said claims, and prayed that he might have the aid and direction of the said Court of Chancery and be allowed to levy an assessment upon the said defendant and the other incorporators and stockholders of the said corporation requiring them to pay to the plaintiff 30 40

as such receiver the amount of their said several subscriptions to the capital stock of the said corporation remaining unpaid, and that the plaintiff should be allowed to bring actions to recover the money so assessed, to the end that the same might be applied under the directions of the said court to the payment of the debts of the said corporation, and that on the Ninth day of June, Nineteen hundred and three, the Court of Chancery by its decree bearing date on that day ordered, adjudged and decreed that the plaintiff as such receiver be and he thereby was directed and authorized to call and collect the sum of Six thousand three hundred and forty-four dollars and ninety-seven cents, with interest from the said defendants, William S. Ketcham, Jr., George W. Ketcham and George W. Ketcham, as Administrator of the estate of William S. Ketcham, Sr., out of their respective subscriptions as incorporators and stockholders of the Clinton Hill Lumber and Manufacturing Company which had not been fully paid up, but not to exceed Sixty per cent thereof, and to enforce payment of such assessment and collect by suit, if necessary, against each of the above named delinquent subscribers and stockholders of the said corporation.

And the plaintiff avers that in pursuance of the said decree he, as such receiver, made an assessment against the said George W. Ketcham of the sum of Six hundred dollars on the Seventeenth day of July, Nineteen hundred and three, and that on the Twenty-third day of July, Nineteen hundred and three, he notified the said defendant that he had levied such an assessment upon him as an original subscriber to the certificate of organization of the Clinton Hill Lumber and Manufacturing Company and demanded that the said defendant pay the same within thirty days from the service of that notice upon him.

And the plaintiff avers that by reason thereof the defendant became indebted to the plaintiff as such receiver in the said sum of One thousand dollars, and being so indebted the defendant then and there promised the plaintiff to pay him the said sum of money on request, yet the plaintiff avers

that the defendant, intending to injure the plaintiff in this regard, did not nor would perform his said agreement nor his said promises and undertakings but wholly neglected and refused to pay the same according to the form and effect of the said agreement and of his said promises and undertakings.

For that whereas, also, the defendant heretofore, to wit, on the Tenth day of December, Eighteen hundred and ninety five, at Newark in said County, was indebted to the plaintiff in One thousand dollars for goods sold and delivered by the plaintiff to the defendant at his request; and in like sum for work done and materials furnished by the plaintiff for the defendant at his request; and in the like sum for money lent by the plaintiff to the defendant at his request; and in the like sum for money received by the defendant for the use of the plaintiff; and in the like sum for interest for the forbearance by the plaintiff at the defendant's request of money due and owing from the defendant to the plaintiff; and in the like sum for money due from the defendant to the plaintiff on an account stated between them; and being so indebted, countt stated between them; and being so indebted, the defendant in consideration thereof, then and there promised the plaintiff to pay him the said several sums of money on request. Yet the defendant has disregarded his said several promises, and has not paid the said several sums of money, nor any of them, or any part thereof, although often requested so to do, but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiff One thousand dollars, and therefore he brings his suit. 10
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And the said defendant George W. Ketcham, by Frank E. Bradner, his attorney, comes and defends the wrong and injury when etc. and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him; and of this he, the said defendant, puts himself upon the country &c. 40

And for a further plea in this behalf, by leave of the court for that purpose first had and obtained according to the form of the statute in such case

made and provided, the said defendant says that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said, The Clinton Hill Lumber & Manufacturing Company of which the said plaintiff claims to be the Receiver, was never incorporated and the several persons who signed said certificate mentioned in said declaration never
10 became a body corporate of the State of New Jersey; and this he the said defendant is ready to verify, wherefore he prays judgment whether the said plaintiff as Receiver aforesaid should have his aforesaid action against him.

And for a further plea in this behalf, by like leave of the court for that purpose first had and obtained according to the form of the statute in such case made and provided, the said defendant
20 says that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that on the Twenty-fifth day of February, eighteen hundred and ninety-three, at Newark in the County of Essex, the several persons who had subscribed for the stock of said alleged Clinton Hill Lumber and Manufacturing Company, and who at that time were all the stockholders of said Company the said Frank D.
30 Holloway having before that time surrendered his stock and withdrawn from said Company) agreed among themselves to waive and cancel the subscription of this defendant for the stock of said Clinton Hill Lumber and Manufacturing Company, and then and there all of the stock-holders of said Company released the said defendant of and from any liability to perform his said subscription and cancelled the said subscription; and that
40 at the time last mentioned the said Clinton Hill Lumber and Manufacturing Company was not indebted to any person or persons or corporation in any sum of money whatever: and this he the said defendant is ready to verify, wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c.

And for a further plea in this behalf by like leave of the court for that purpose first had and obtained according to the form of the statute in such case made and provided, the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that he, the said defendant did not at any time within six years next before the commencement of this suit undertake or promise in manner or form as the said plaintiff has above thereof complained against him. And this he, the said defendant is ready to verify, wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c.

10

And the plaintiff as to the plea filed by the defendant wherein he has put himself upon the country, does the like.

20

And for replication to the defendant's second plea the plaintiff says, that the said Clinton Hill Lumber and Manufacturing Company was incorporated and that the several persons who signed the said certificate of incorporation did thereupon become a body corporate of the State of New Jersey, and this the plaintiff prays may be inquired of by the country

And for replication to the third plea of the defendant the plaintiff says, that the several persons who had subscribed for the stock of the said Clinton Hill Lumber and Manufacturing Company, as in said plea alleged, did not agree among themselves to waive and cancel the subscription of said defendant for the stock of the said company and did not release the said defendant from any liability to perform his said subscription and did not cancel the said subscription, and this the plaintiff prays may be inquired of by the country.

30

And for replication to the fourth plea filed by the said defendant the plaintiff says, that the defendant did, within six years next before the commencement of this suit, undertake and promise in manner and form as is alleged in the declaration, and this the plaintiff prays may be inquired of by the country.

40

Therefore let a Jury thereupon come before the Judge aforesaid, at Newark aforesaid the first Tuesday of April next, who neither &c. to recognize &c. because &c. and the same day is given to the parties here &c.

10 At which time before the Judge aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the Sheriff hath not sent here the writ to him in this behalf directed nor hath he done anything thereupon.

20 And now at this day, that is to say, the sixteenth day of April A. D. Nineteen hundred and six until which day the issue as aforesaid, joined had been continued before the Judge aforesaid, at Newark aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the Jurors of the Jury of whom mention is before made being summoned also come who to speak the truth of the matter within contained, being chosen, tried and sworn upon their oath say they find for the plaintiff and assess his damages against the defendant at the sum of One hundred and seventy-nine dollars and thirty-eight cents.

And so they say all.

Judgement signed April 16, 1906.

WM. S. GUMMERE,

Judge.

30

Whereupon it is considered that the said plaintiff do recover against the said defendant his damages in form aforesaid found and also the sum of sixty-three dollars and sixty-six cents as for his costs about his suit in this behalf expended by the Court now here adjudged to him of increase with his assent which damages costs and charges in the whole amount to Two hundred and fifty-three
40 dollars and four cents.

And the defendant in Mercy &c.

ESSEX CIRCUIT COURT

Monday, April 16, 1906

THOMAS N. McCARTER, REC'R,

vs

GEORGE W. KETCHAM

ON CONTRACT.

10

BILL OF EXCEPTIONS.

Before Hon. Frederic Adams, J., and a Jury.
For plaintiff appear Coult & Howell.

For defendant appear Frank E. Bradner and
Chandler W. Riker.

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Mr. Howell opens for plaintiff.

WILLIAM S. KETCHAM, Jr., sworn in behalf
of plaintiff.

30

Direct Examination by Mr. Howell.

Q. Where do you live, Mr. Ketcham? A. In this
city.

Q. What is your business? A. Not doing any-
thing at present.

Q. You were formerly in the lumber business?
A. Yes, sir.

Q. Did you at any time have anything to do with
a so-called corporation named the Clinton Hill
Lumber & Manufacturing Company? A. Yes, sir.

40

Q. You were one of the incorporators, were you
not? A. Yes, sir.

Q. Who were the others? A. My father, Will-
iam S. Ketcham, my brother, George W. Ketcham,

Frank D. Holloway and Edward E. Campfield.

(Question read).

Objected to as not the best evidence, and defendant's counsel ask that the answer be stricken out. THE COURT. Regarding it as merely preliminary, I will not strike it out. It is not the best evidence.

10

Q. Did the incorporators sign a certificate of incorporation? A. I did; I think the others did.

Q. Where was that signed? A. In Lawyer MacDonald's office.

Q. Do you know what was done with the original paper after it was signed? A. The incorporation, you mean?

20 Q. The incorporation certificate. A. What finally became of it?

Q. What was done with it after it was signed? A. Well, I think it was destroyed finally, because the—

Q. No. What was done with it after it was signed? A. The lawyer had it—MacDonald.

Q. Did it ever come into your possession afterwards? A. I don't think it did.

30 Q. Do you mean to say that you never saw it after it was recorded? A. I don't recall now that I did.

Q. You say you think it was destroyed? A. Yes, sir.

Q. Who destroyed it? A. I am not sure whether I did or whether MacDonald did; I told him about it—

40 Q. No, I am asking you who did it. I show you a paper which purports to be a copy of a corporation certificate, certified by the county clerk of this county, and ask you to look it over. (Shown to witness).

Mr. Bradner—We will admit that that is a copy of the original.

A. I presume that is a copy, so far as I recall.

Mr. Howell—I understand that the other

side admit that this is a copy of the original, if your Honor please. I offer it in evidence.

(Marked "Ex. P1, April 16, 1906.")

Q. Who is the George W. Ketcham whose name appears to be copied at the foot of this instrument? A. My brother.

Q. And he is the defendant in this suit? A. If that is the case you are trying now. 10

Q. Yes. A. Yes, sir.

Q. You were subpoenaed to produce the minutes of that corporation here, were you not? A. I was a week ago.

Q. Do you produce them? A. I haven't had any papers for ten years; this—

Mr. Howell—I call on the other side to produce the minutes of the corporation. Defendant's counsel produce papers. 20

Mr. Riker—We do not admit that they are minutes of the corporation.

Q. What are these papers that I show you (shown to witness)? A. They are notes of the attempt to form this corporation, January 23, 1893.

Q. That is the only minute that was ever made of that meeting, is it not? A. Yes, sir.

Q. And what is this other document (shown to witness)? A. Those appear to be minutes written by Mr. Holloway. 30

Q. You have read these over, have you not? A. Yes, sir.

Q. And they are correct? A. If those are the right papers.

Mr. Howell—I offer in evidence, first, the minutes of the first meeting of the stockholders of the Clinton Hill Lumber & Manufacturing Company, dated January 23, 1893. (Marked "Ex. P2, April 16, 1906".) 40

Mr. Howell—I next offer the minutes of a special meeting of the stockholders of the same company, held on February 6, 1893. (Marked "Ex. P3, April 16, 1906".)

Plaintiff's counsel reads Exhibits P1, P2
and P3.

Q. Now, Mr. Ketcham, those minutes that I just read refer to a bill of sale. Was there a bill of sale made by Mr. Holloway to this company?

A. Yes, sir.

10 Q. Look at that and see if that looks like a copy of it (shown to witness). Oh, here is the original. That is the original, is it not (another paper shown to witness)? A. I presume it is.

Q. Well, don't you know it is? A. I don't know; it is a bill of sale, and it hasn't my signature, so—

Q. Well, you have seen that before, have you not? A. I don't know. It is a bill of sale and I presume that is the one.

20 Mr. Bradner—We will admit it, Mr. Howell.

Mr. Howell—It is admitted in evidence, then.

(Marked "Ex. P4, April 16, 1906.")

Plaintiff's counsel reads Exhibit P4.

30 Mr. Bradner—We will admit, for the purposes of this particular case, that this corporation became a corporation de facto; that the certificate of incorporation was never filed with the Secretary of State, and it never became a corporation de jure. Is that satisfactory?

Mr. Howell—Well, all I want to prove is that it is a corporation de facto; I do not care about any de jure admissions of any kind.

Mr. Bradner—Well, we want that incorporated in our admissions.

40 The Court—The de facto character of the corporation is admitted. Is that what you want?

Mr. Howell—That is all I want.

Q. Mr. Ketcham, did you make out some certificates of stock in this corporation? A. No, sir.

Q. Didn't you make out some certificates that were introduced in evidence on a former trial of one of these cases, which were there called certificates of stock? A. No, sir.

Mr. Howell—I call on the other side to produce the papers mentioned in my question.

Mr. Bradner—I suppose you mean those three papers which you call certificates of stock, but which we do not? 10

Mr. Howell—Yes.

(Defendant's counsel produce papers.)

Q. I show you, Mr. Ketcham, the papers that I had in mind, and ask you who made those out (shown to witness). A. I did.

Q. When? A. February 6, 1893.

Q. Are they signed by you? A. Yes, sir.

Q. Who signed the name "William S. Ketcham, President," on there? A. I did. 20

Q. Who put the Company's seal on them? A. I did.

Q. How did you come to make these papers?
A. In anticipation that they might be used.

Q. But you think you never got far enough along with your corporation to make them useful?
A. No, sir.

Mr. Howell—I offer these in evidence. 30

Mr. Bradner—Are these competent to prove anything in this case? It does not appear that they were issued by the corporation or by the authority of the corporation; it was the witness's own act, which would not bind this defendant in any way.

Mr. Howell—I should suppose it was a corporate act, done by an officer of the corporation, apparently in the regular performance of his duty. At any rate, it goes to the question of incorporation. 40

Mr. Riker—We object to the admission of the papers. The witness has sworn that what he did he did at his own instigation; the minutes disclose that there was no action

of the Board of Directors, and the signature of the President is stated to be not the signature of the President. I see no probative force in the papers.

The Court—I will receive them, subject to your objection.

10 (The three papers referred to, fastened together, are marked “Ex. P5, April 16, 1906.”)

Defendant’s counsel pray an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge. (L. S.)

20 Plaintiff’s counsel reads Exhibit P5.

Cross Examination by Mr. Bradner.

Q. Mr. Ketcham, one of these papers appears to be made out to George W. Ketcham? A. Yes, sir.

Q. That was also written out by you and signed by you? A. All three in the same manner.

30 Q. Was that paper ever delivered to your brother? A. No, sir.

Q. Did he ever pay anything for the two shares of stock mentioned in the paper? A. No, sir.

Q. You have always retained that paper in your possession, have you not? A. Those, you mean?

Q. This particular one relating to your brother. A. We, you have had them for—

40 Q. Well, until you gave them to me, as attorney in this matter? A. Yes, sir.

Q. Were you present at every meeting of the stockholders that was held? A. Yes, sir.

Q. Did your brother ever attend any meeting of the stockholders? A. No, sir.

Q. Were you present at every meeting of the Directors? A. Yes, sir.

Q. Did he ever attend any meeting of the Directors? A. No, sir.

Q. Did he ever pay anything on account of the five shares of stock? A. No, sir.

Mr. Riker—Now, if the Court please, I wish to move to strike from the record the so-called certificate of stock, marked Exhibit P5. I have not quite yet understood Mr. Howell's purpose in offering it. It certainly was not an act of the corporation. The paper in question appears never to have been given to Mr. George W. Ketcham; he seems to have had no connection with it whatever. No stock of the corporation was ever authorized. I do not think it now appears, at least, that it has probative force. Certainly I cannot conceive the purpose for which it is introduced, and I think it should be stricken out.

The Court—(After discussion). I will deny the motion.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is sealed accordingly.

FREDERIC ADAMS
Circuit Court Judge. (L. S.)

BOYLSTON A. THOMPCKINS sworn in behalf of plaintiff.

Direct Examination by Mr. Howell.

Q. Mr. Thompkins, you are employed in the office of the Clerk in Chancery at Trenton? A. I am, sir.

Q. Have you produced the files in the case of the Cumberland Lumber Company against the Clinton Hill Lumber & Manufacturing Company? A. Yes, sir. (Producing papers).

Mr. Howell—I propose now, if the court please, to offer this bundle of papers in evidence, and to call the attention of the counsel on the other side to particular papers.

Mr. Bradner—For what purpose? We have admitted the corporation de facto.

Mr. Howell—I introduce these as a foundation for proving the order for assessment.

Mr. Bradner—We will admit that the order for assessment was made.

10 Mr. Howell—Will you admit that the claim of Strieby, Sprague & Company was filed and that it was allowed by the Receiver, and that these stockholders appealed from the order?

Mr. Bradner—We would like to see the original claim. Have you got it?

Mr. Howell—Yes, we have it.

First, I offer in evidence the bill of complaint, filed April 9, 1895.

Second, an order to show cause why a Receiver should not be appointed.

20 Third, order appointing Receiver, filed May 14, 1895.

Fourth, Receiver's oath, filed May 21, 1895.

Mr. Bradner—We will admit that an order was made by the Court of Chancery, directing and authorizing a receiver, appointed as Receiver of this insolvent corporation, to make an assessment against the stockholders. Put that paper in evidence.

30 Mr. Howell—Well, I want more than that, if the Court please; I want to prove that a claim was filed by Strieby, Sprague & Company, and that it was allowed by the Receiver, and that this defendant took an appeal from the allowance by the receiver of the claim, and that the appeal was heard before the Court of Chancery and the appeal was dismissed and the claim decreed by the court to be a valid claim against this corporation.

40

The Court—Proceed.

Mr. Howell—Fifth, a petition of appeal by William S. Ketcham, Sr., William S. Ketcham, Jr. and George W. Ketcham, appealing from the determination of the Receiver allowing the claim of Strieby, Sprague &

Company, which petition appears to have been filed on July 11, 1895.

Sixth, an order affirming the Receiver's allowance of the claim of Strieby, Sprague & Company and the Cumberland Lumber Company, filed October 31, 1895.

Seventh, an order to limit creditors, filed April 12, 1899.

Eighth, an order barring creditors, filed May 24, 1899. 10

Ninth, a petition by the Receiver for leave to make the assessment, filed November 9, 1899.

Tenth—an order to show cause on that petition, filed November 10, 1899.

Eleventh, an order requiring the defendants to answer that petition, filed December 26, 1899.

Twelfth, the answer of the defendants, including Mr. George W. Ketcham, filed January 18, 1900. 20

Thirteenth, replication to that answer, filed January 21, 1900.

Fourteenth, the order for the assessment in question, filed June 10, 1903.

I offer those in evidence.

There are two of these orders, if the court please, that I want to read to the jury. The first one is the order affirming the Receiver's allowance of the claim. That is dated the 30th of October, 1895; I suppose it was filed the next day (reading). The next order is the one upon which the suit is specifically brought; that is the order of June 9, 1903 (reading). The several papers marked P6, April 16, 1906. 30

Cross Examination Waived.

Mr. Howell—Now I offer in evidence the proof of claim of Strieby, Sprague & Company referred to in that decree. (Marked "Ex. P7, April 16, 1906.") 40

Mr. Bradner—The objection which we wish to make to the assessment is this: We will object to the assessment unless it ap-

pears that after the assessment was made by the Receiver it was confirmed by the Court of Chancery; our point being that it is a judicial action, and it must appear that the Chancellor has confirmed that assessment, so that it would be the action of the court. That will be the ground of our objection.

10

Mr. Howell—Then you will admit that a copy of this document which I now hold in my hand, signed by the Receiver, was served personally on the defendant, George W. Ketcham, by William S. Smith, by delivering a copy signed by the Receiver to Mr. Ketcham personally on the 22nd day of July, 1903.

20

Mr. Bradner—Yes, we admit that; we admit the service of that paper. Plaintiff's counsel offers in evidence the paper referred to. (Marked "Ex. P8, April 16, 1906.")

Plaintiff rests.

30

Mr. Bradner—If the Court please, we move to nonsuit the plaintiff on two grounds: First, that the plaintiff has not proved any liability on the part of the defendant on his subscription for stock; second, that the plaintiff has not proved an assessment made against the defendant by the Court of Chancery.

40

The Court—(After argument). I understand this to be a case where rights of third persons have arisen by reason of the acts of a corporation de facto. The Receiver represents creditors. To whom must the creditors resort through the Receiver? It seems to me there can be but one answer to that question: They must resort to the incorporators, of whom this defendant is one.

As to the second point. It certainly is not for this court to initiate new procedure in the Court of Chancery. It must be a matter of every day practice; receivers are all the time making assessments; and I pre-

sume that the Court of Chancery in this case pursued its usual routine by directing the Receiver to make assessments, which, it appears to me, is a mere matter of arithmetic; it does not require the exercise of any judicial faculty. The claim having been recorded and approved by the Court, if I am wrong about this you may correct me—being definite in amount, it is for the Receiver to work out the sum in arithmetic whereby the responsibility of the stockholder shall be ascertained. As it does not appear that the procedure in this case has been inconsistent with the orders of the Court of Chancery or with any practice of the Court of Chancery, and as the Receiver seems to have done just what he was told to do, I am not prepared to say that there has been any failure in the matter of regularity.

10

20

For these reasons I deny the application to nonsuit.

Defendant's counsel pray an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Frederic Adams (L. S.)
Circuit Court Judge.

30

Mr. Bradner opens for defendant.

GEORGE W. KETCHAM, defendant, sworn in his own behalf.

Direct Examination by Mr. Bradner.

Q. Mr. Ketcham, you are the defendant in this suit? A. Yes, sir.

40

Q. You subscribed for some stock in the Clinton Hill Lumber & Manufacturing Company, did you not? A. Yes, sir.

Q. Did you make an agreement to take that stock before you signed the certificate of incorporation?

Objected to.

Q. Did you make any agreement to take stock before you signed the certificate of incorporation?

10 Mr. Howell—I object to that question, if the Court please. I think the agreement speaks for itself. He signed a paper in which he acknowledged himself to be the holder of stock. Now, my friend on the other side desires to go into what took place prior to that time. I think, like every other agreement, like every other contract, the whole thing is tied up in the paper which was eventually signed.

Mr. Bradner—I simply wanted to show that there was no previous written agreement.

20 The Court—It seems to me to be immaterial. I sustain the objection.

Defendant's counsel pray an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Frederic Adams
Circuit Court Judge. (L. S.)

30 Q. Was there any agreement in writing relating to stock in this corporation? A. I never saw any.

Q. Other than the certificate of incorporation? A. None that I ever saw or ever heard of.

Q. You signed the certificate? A. I did.

Q. Where? A. Well, I think it was in Mr. MacDonald's office; it is so long ago that I can't quite remember, but I think it was the day after the meeting that I went to his office and signed it.

Q. The paper recites that you are the holder of five shares of stock. At that time had you received any certificate of stock? A. Never.

40 Q. You never had any? A. Never had any.

Q. Do you know whether there was any stock book showing the number of shares the different parties were entitled to? A. I did not hear you.

Q. Do you know whether there was any stock book showing the number of shares that the different persons were entitled to? A. I never saw any; I think there never was one.

Q. Did you sign a waiver of notice of the first meeting? A. I don't think I ever did; I don't remember ever to have signed any. I don't think I ever did; I never saw one.

You never saw such a waiver? A. No, sir.

Q. What meetings of the Stockholders did you attend? A. None of them.

Q. What meetings of the Directors did you attend? A. None; I never was present at any of the meetings 10

Q. Why didn't you attend the meetings of the Directors, Mr. Ketcham? A. Well, in the first place, I had no notice, and—well, I think that is sufficient reason; I didn't know of the meetings until afterwards.

Q. Did you know that you were a Director?

A. I didn't know it until afterwards, I heard of it.

Q. After when? A. Well, after the whole thing was over, months afterward. 20

Q. Months afterwards? A. Yes, sir.

Q. Weren't you notified when you were elected a Director? A. No, sir.

Q. Have you ever paid any part of the subscription of \$500? A. I never was called on; never paid a penny.

Q. Do you know whether this Company ever transacted any business? (Objected to.)

(Question withdrawn.)

Q. What knowledge have you of any acts done by this corporation other than electing the officers and having the meetings of the stockholders and directors? 30

Objected to as immaterial.

The Court—I suppose you might have objected, with equal propriety, to all the questions that have been asked. The Court allowed Mr. Bradner to put his client on the stand in order to have any advantage that it might give him when the case is reviewed. 40
It seems to me that none of these questions go to the root of the case. I will, however, allow this question to be answered, as I have allowed the others to be answered.

A. I never knew of any act on the part of this com-

pany; in fact, I never heard anything about it until after it was in the courts and read it in the newspapers.

Q. How long was that after you had signed this certificate?

Objected to on the same ground.

10 The Court—I will allow it for the same reason. A. Why, it must have been a couple of years; I can't tell now; it was a long time.

Objection withdrawn.

Q. Did you ever know of any stockholders' meetings? A. No sir; I never did.

Q. Or any directors' meetings?

The Court. .He has already said he had no notice.

Mr. Riker—Well, he now testifies that he never heard of them.

20 Q. You never heard anything about the company until about two years afterwards, when it was in the courts, I understood you to say; is that so, Mr. Ketcham? A. That is true.

Of course, I knew the company was to be formed or proposed to be formed, or I wouldn't have signed the paper; but after that I knew nothing about it.

Defendant rests.

30

Mr. Howell—I move to strike out the defence, if the Court please. It does not seem to me that the very slight testimony that is given by the last witness is any defence to the action.

The Court—What I think I ought to do in this case, unless counsel can convince me otherwise, is to direct a verdict for the plaintiff.

40

Mr. Howell—I would be satisfied with that.

The Court—I will hear the counsel, if they have anything further to say. I suppose the question is fully disposed of in the motion to nonsuit. If anything has escaped my mind—

Mr. Riker—No, I think we have presented the whole matter, your Honor.

The Court—(To the jury). In the opinion of the Court, gentlemen, this resolves itself into a question of law, and the relation in which the defendant placed himself in respect to this corporation puts upon him the obligation of a stockholder. The result of that conclusion is that he is bound to pay his ratable share of the debts incurred by that corporation. It appears that there were debts which this irregularly formed corporation, which was still a corporation, had incurred, whereby the rights of third persons had arisen. Those creditors, whose representative the receiver was, through him work out their rights against the property of the corporation, or, failing that, against the personal liability of the stockholders. The defendant was a stockholder, and the conclusion to which this line of thought leads is that he is liable in this case to pay the assessment that has been made upon him, with interest. 10 20

That is the way in which the matter presents itself to the Court; and if the Court is in any error in that conclusion, that error may be rectified by courts of superior jurisdiction, before whom the defendant has a right to bring his case. 30

My instruction to you, gentlemen, is to find a verdict for the plaintiff and against the defendant for the amount of the assessment, which is, as I understand, \$154.75, and the interest, \$24.63, making a total of \$179.38. You may render your verdict for that amount, (Verdict accordingly.)

Defendant's counsel pray an exception to this ruling of the Court. 40

Exception allowed; let it be sealed and it is sealed accordingly.

Frederic Adams,
Circuit Court Judge. (L. S.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10 THOMAS N. McCARTER, *Receiver,*
Defendant in Error,
vs.
GEORGE W. KETCHAM,
Plaintiff in Error.
20 *On Error to Essex Circuit Court*

} *Assignments*
} *of Error.*

And now at this day the plaintiff in error assigns the following causes of error.

1. Because the said Circuit Court in the trial of said cause admitted in evidence three certain papers called certificates of stock, which papers were not issued by the Clinton Hill Lumber and Manufacturing Company, and were not the act of the defendant.

2. Because the Circuit Court in the trial of said cause denied the motion of the defendant's counsel to strike out of the evidence and from the record the said so-called certificates of stock.

3. Because the Circuit Court denied the motion of defendant's counsel to enter a judgment of nonsuit in said cause for the reasons stated as the ground of said motion, namely,—First, that the plaintiff has not proved any liability on the part of the defendant on his subscription for stock, and second, that the plaintiff has not proved an assessment made against the defendant by the Court of Chancery.

4. Because the Circuit Court in the trial of said cause refused to admit legal evidence offered by the defendant and overruled the following question: Did you make any agreement to take stock before you signed the certificate of incorporation.

5. Because the Circuit Court directed the jury to render a verdict in favor of the plaintiff in said cause, and struck out the defense which had been made by the defendant.

WHEREFORE, and for other errors appearing in the record and proceedings aforesaid the said

George W. Ketcham prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that he may be restored to all things he has lost on account of said judgment, and that the said Thomas N. McCarter, Jr., Receiver of the Clinton Hill Lumber and Manufacturing Company, may rejoin to the said errors, etc.

FRANK E. BRADNER

*Attorney for and of counsel
with Plaintiff in Error.*

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30

40

EXHIBITS FOR PLAINTIFF.

EXHIBIT P. 1. APRIL 16, 1906.

CERTIFICATE OF INCORPORATION.

THIS IS TO CERTIFY, that we William S. Ketcham, William S. Ketcham, Junior, Frank D. Holloway, Edward E. Campfield and George W. Ketcham, do hereby associate ourselves into a company, under and by virtue of the provisions of an act of the Legislature of New Jersey entitled: "An Act Concerning Corporations," approved April 7th, 1875, and the several supplements thereto, for the purpose hereinafter mentioned, and to that end we do by this our certificate set forth.

First: That the name we have assumed to designate such company, and to be used in its business and dealings is the Clinton Hill Lumber and Manufacturing Company.

Second: That the place in this State where the business of such company is to be conducted is the City of Newark, in the County of Essex, and that the objects for which the said company was formed are to manufacture and sell sashes, doors, blinds and all planing mill work and carpenters' supplies and to buy and sell lumber.

Third: That the total amount of the capital stock of said company is seventy-five thousand dollars; the number of shares into which the same is divided is seven hundred and fifty, and the par value each share is one hundred dollars. The amount with which the said company will commence business is forty thousand five hundred dollars, which is divided into four hundred and five shares of the par value of one hundred dollars each.

Fourth: The names and residences of the stockholders, and the number of shares held by each, are as follows, to wit:

Edward S. Campfield, Newark, N. J. . . . 100 shares
William S. Ketcham, Newark, N. J. . . . 100 shares
William S. Ketcham, Jr., Newark, N. J. 100 shares
Frank D. Holloway, Newark, N. J. . . . 100 shares
George W. Ketcham, Newark, N. J. . . . 5 shares

Fifth: The period at which said company shall commence is the twenty-third day of January, eighteen hundred and ninety-three, and the period at which it shall terminate is the twenty-third day of January, nineteen hundred and forty-three.

IN WITNESS WHEREOF, We have hereunto set our hands and seals the twenty-first day of January, eighteen hundred and ninety-three.

EDWARD S. CAMPFIELD, (L. S.)
WM. S. KETCHAM, (L. S.)
WM. S. KETCHAM, JR., (L. S.)
FRANK D. HOLLOWAY, (L. S.)
GEORGE W. KETCHAM, (L. S.)

10

EXHIBIT P2. APRIL 16, 1906.

20

NEWARK, N. J., January 23, 1893.

The first meeting of the stockholders of the Clinton Hill Lumber and Manufacturing Co. was held in office of Mr. S. J. McDonald (Prudential Bldg.) at 2.30 P. M.

Present, Wm. S. Ketcham, Edward E. Campfield, Frank D. Holloway and William S. Ketcham, Jr.

Meeting called to order and Mr. Campfield elected temporary chairman.

Wm. S. Ketcham, Jr., temporary Secy.

Moved and carried that certificate of organization and waiver of notice of meeting be filed.

A list of laws was read and on motion adopted and approved.

Moved and carried that the Sec'y cast a ballot for the original incorporators for directors.

Ballot cast & named the following:

Wm. S. Ketcham
E. E. Campfield
F. D. Holloway
G. W. Ketcham
W. S. Ketcham, Jr.

who were declared and elected as directors.

30

40

Same place as above. January 23-93.

Directors meeting.

A meeting of the directors was called at which

Mr. Wm. S. Ketcham, was elected Pres.

Mr. E. E. Campfield was elected V. Pres.

Mr. F. D. Holloway was elected Secy.

Mr. W. S. Ketcham, Jr., was elected Treas.

The oath of office as Secy. was taken by F. D.

10 Holloway.

The Treas. was instructed to give bonds in \$5,000.00.

Treasurer authorized to procure necessary stationery, etc.

The fixing of principal office of the Co. was laid on table for the present.

20 A bill of sale was made by Mr. F. D. Holloway to the company—said bill of sale representing what Mr. Holloway owed Mr. Wm. S. Ketcham, and to be issued in stock by the Company to Mr. Wm. S. Ketcham.

EXHIBIT P3. April 16, 1906.

OFFICE OF

F. D. HOLLOWAY & CO.,

Wholesale and Retail Dealers in

LUMBER AND TIMBER.

Cor. Jelliff Avenue and Rose St.,

30

NEWARK, N. J., FEB. 6th, 1893.

Special meeting of the stockholders of the Clinton Hill Lumber & Manufacturing Co. called to be held at 9 o'clock in the forenoon on Monday Feb. 6th, 1893, was called to order by the President at 9.05 A. M.

On motion of Wm. S. Ketcham, Jr., the meeting was adjourned until 2 o'clock Tuesday Feb. 7th, 1893.

40

F. D. Holloway,

Secretary.

(Same heading as above).

NEWARK, N. J., Feby. 6th, 1893.

Special meeting of the directors of the Clinton Hill Lumber & Manufacturing Co. called to be

held at the office of the company, was promptly called to order by the President. All of the directors being present except Geo. W. Ketcham. On motion of Wm. S. Ketcham, Jr. the Board of Directors were authorized to call upon the stockholders for 40 per cent. of the amount subscribed to the stock of the company, to be paid into the treasury on or before Tuesday Feb. 7th and certificates be issued therefore.

10

The resignation of F. D. Holloway as Secretary and director of the company was read and accepted to take effect as soon as his successor was elected and qualified in his place.

On motion W. S. Ketcham, Jr., and Ed. E. Campfield were subpoenaed to take a temporary charge of the affairs of the company until the next meeting of the board of directors.

On motion of Ed. E. Campfield, W. S. Ketcham, Jr. was elected Secretary of the Board in place of F. D. Holloway resigned.

20

On motion of W. S. Ketcham, Jr., the Board adjourned until Tuesday Feb. 7th, 1893.

F. D. Holloway,
Secretary.

EXHIBIT P4. APRIL 16, 1906.

Know all Men by these Presents: That I, Frank D. Holloway of the City of Newark, Essex County, New Jersey, of the first part, for and in consideration of the sum of One dollar, lawful money of the United States, to me in hand paid, at or before the ensembling and delivery of these presents, by The Clinton Hill Lumber and Manufacturing Company, a corporation of the State of New 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 party of the second part, its successors and assigns all the goods and chattels particularly described and mentioned.

30

40

Being all the stock of lumber now in the yard of Frank D. Holloway & Co., or in course of shipment; also lease of premises, corner Rose Street and Jelliff avenue, buildings and improvements

thereon good-will, accounts receivable, fixtures and everything appertaining to the business of the said Frank D. Holloway & Co.

10 To Have and To Hold, the same unto the said party of the second part, its successors 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 said goods and chattels hereby sold unto the said party of the second part, its successors and assigns, against all and every person and persons whomsoever.

In witness Whereof I have hereunto set my hand and seal the Twenty-third day of January in the year of Our Lord One Thousand eight hundred and Ninety-three.

Signed, sealed and delivered
in the presence of

20 Samuel J. McDonald

Frank D. Holloway (L. s.)

Recorded in the Essex Co. Clerk's Office Jan.
28, 1893, in Book J of Miss. p. 59.

EXHIBIT P5. APRIL 16, 1906.

Shares \$100.00 each

NEWARK, N. J., Feby. 6, 1893.

30 This is to certify that George W. Ketcham, is entitled to two shares of stock in the Clinton Hill Lumber & Mfg. Co. Capital \$75,000.

By order of Directors

Wm. S. Ketcham,
Pres.

Wm. S. Ketcham, Jr.
Treas.

EXHIBIT P6. APRIL 16, 1906.

40 IN CHANCERY OF NEW JERSEY.

Bill of Complaint.

*To the Honorable Alexander T. McGill, Chancellor
of the State of New Jersey:*

1. In Chancery complaining shows unto your Honor your orators, The Cumberland Lumber

Compan^y. a corporation organized under the laws of the State of West Virginia, and Jonathan F. Strieby, William E. Sprague, George Bubb, Nathaniel B. Bubb, and Henry C. Bubb, of the City of Williamsport, in the State of Pennsylvania, partners, trading under the firm name of Strieby, Sprague and Company. That on or about the eighteenth day of March, eighteen hundred and ninety-three, your orators filed their bill of complaint in this Honorable Court against the Clinton Hill Lumber and Manufacturing Company, alleging, among other things, that they recovered judgments against one Frank D. Holloway, amounting in the aggregate to upwards of thirty-two hundred dollars; that subsequently to the contracting of the debt on which the said judgments were founded, the said Frank D. Holloway had transferred to the said the Clinton Hill Lumber and Manufacturing Company, a large amount of assets and property, valued at upwards of fifteen thousand dollars, in fraud of his creditors, and praying, among other things, that the said transfer might be set aside as to your orators said judgments, and the execution thereon, and for such other relief as the nature of their case demanded: and that such proceedings were had in that cause that on the fourteenth day of November, eighteen hundred and ninety-three, a final decree was entered in that cause granting to your orators the relief prayed for in and by their said bill of complaint, and that by said decree the transfer of property made by the said Frank D. Holloway to the Clinton Hill Lumber and Manufacturing Company was set aside, annulled and made void against the judgments and executions of your orators, and the said Clinton Hill Lumber and Manufacturing Company was required to pay your orator's costs of that suit, and that thereby Thomas N. McCarter, Jr., of the City of Newark, was appointed Receiver in that cause with full power and authority to demand, sue for, collect, receive, and take into his possession all the goods and chattels, rights and credits, moneys and effects, and property of every description, which was so transferred to the said Clinton Hill Lumber and Manufacturing Company by the said Frank D. Holloway, and

that the said Clinton Hill Lumber and Manufacturing Company, on service upon it of a copy of said decree was directed forthwith to transfer and deliver to the said Receiver all the property in its possession which was so transferred to it by the said Frank D. Holloway, and that the said Receiver should thereupon proceed to convert the same into cash and apply the proceeds thereof to the payment
10 of your orators said judgments, and that it was further ordered by the said decree that in case not enough money was realized by the said Receiver from the said assets, the complainants should have leave to apply to the Court at the foot of the said decree for such other and further relief in the premises as should be equitable and just.

2. That the said Clinton Hill Lumber and Manufacturing Company appealed from the said decree to the Court of Errors and Appeals, but that the
20 same was affirmed by that Court, and that after the record had been remitted, the said Receiver demanded from the said Clinton Hill Lumber and Manufacturing Company the possession of the property and assets of which he was appointed Receiver, but your orators show that long prior to the said demand, the said Clinton Hill Lumber and Manufacturing Company had sold and disposed of all the said property, and had transferred the proceeds to one or more of its stockholders. That thereupon
30 your orators filed their petition in this Honorable Court, representing the facts subsequent to the said decree, and praying that this Court would make an adjudication that the said Clinton Hill Lumber and Manufacturing Company should pay to your orators the amounts due to them respectively, and that thereupon on the first day of April, eighteen hundred and ninety-five, this Court made an order in and by which, after reciting that the said Receiver had caused a copy of the decree and costs and a demand for the transfer of the said property to him
40 to be served upon the Clinton Hill Lumber and Manufacturing Company and that the said Company had sold, assigned or disposed of the property in question, and had not transferred the same to the custody of the said Receiver, it was ordered, adjudged and decreed that the said defendant there-

in. The Clinton Hill Lumber and Manufacturing Company, do forthwith pay to your orators respectively the amounts due to them on their respective judgments as ascertained by the said final decree, together with interest thereon and your orators costs of suit in this Court and in the Court of Errors and Appeals, and that execution should forthwith issue out of this Court in favor of your orators against the said Clinton Hill Lumber and Manufacturing Company to levy and make the said sums of money, and your orators append to this their bill of complaint a certified copy of the said order and pray that the same may be taken as part of this their bill of complaint. 10

3. That on the third day of April, eighteen hundred and ninety-five, execution was issued on the said decree out of this Court directed to the Sheriff of the County of Essex, in which county the said Clinton Hill Lumber and Manufacturing Company had its principal office and place of business, commanding the said Sheriff to make the said moneys in accordance with the directions of the said decree, and your orators show that at the time of the issuing of the said execution there was due to your orators for principal, interest and costs on their said decree, including the costs of the said writ of execution, the sum of three thousand seven hundred and seventy-five dollars and seventy-seven cents; that the said Sheriff attempted to levy the said execution and make the said moneys, but that he could find no property on which to levy belonging to the said Clinton Hill Lumber and Manufacturing Company, and that on or about the eighth day of April, eighteen hundred and ninety-five, the said Sheriff returned the said execution with the return that he could find neither goods nor chattels, lands or tenements, belonging to the said Clinton Hill Lumber and Manufacturing Company, on which to levy or out of which he could make the said moneys or any part thereof, and your orators show that the said moneys still remain wholly due and payable to your orators,, and that no part thereof has ever been paid. 20 30 40

4. That the Clinton Hill Lumber and Manufacturing Company, the defendant in this suit, was

organized as a corporation under the general laws of the State of New Jersey on the twenty-third day of January, eighteen hundred and ninety-three, and that the incorporators and the amount of stock subscribed for by each of them, as appears by the said certificate of incorporation are as follows:

- Frank D. Holloway, one hundred shares.
- Edward E. Campfield, one hundred shares.
- 10 William S. Ketcham, one hundred shares.
- William S. Ketcham, Jr., one hundred shares.
- George W. Ketcham, five shares.

That the capital stock of the said corporation was the sum of forty-five thousand dollars, divided into four hundred and fifty shares of one hundred dollars each, as your orators are informed and believe the truth to be. That at the first meeting of the said Company the said Frank D. Holloway, William S. Ketcham, Jr., Edward E. Campfield and George W. Ketcham were elected directors thereof for the ensuing year, and that at the meeting of the directors subsequently held, the said William S. Ketcham was elected president, Frank D. Holloway, secretary and William S. Ketcham, Jr., treasurer of the said corporation; that the said Frank D. Holloway subsequently resigned the office of secretary thereof and William S. Ketcham, Jr., was elected secretary in his place. And your orators show that the above named persons have continued to hold the offices of President, Secretary, Treasurer and Directors of the said Company without change until the present time.

5. That upon the organization of the said Company, as your orators have been informed, certain property consisting of lumber and other building materials were transferred to the said Company and that in consideration of such transfer, the said Company issued eighty-two shares of its capital stock as follows:

- 40 Shares to the said William S. Ketcham.
- 40 Shares to the said William S. Ketcham, Jr.
- 2 Shares to the said George W. Ketcham.

And that so far as your orators have been able to ascertain, the property which was so transferred to the said Company at that time in consideration of the issue of the eighty-two shares of stock, above

mentioned, was the only property that the said corporation ever owned.

6. That during the final hearing of the cause herein above mentioned, which was pending in this Court between your orators and the said Clinton Hill Lumber and Manufacturing Company, William S. Ketcham, Jr., the Treasurer of the said defendant corporation was sworn as a witness; that the said hearing took place on the ninth day of November, eighteen hundred and ninety-three; that said William S. Ketcham, Jr.: stated to the Court in his testimony that at that time nearly all the property which had been owned by the said Company had been sold, and that he had in his possession only the office desk, the register, the planking and fence around the premises which they had occupied and a very small amount of lumber. And your orators show that whatever property belonging to the said corporation was then in its possession has since been disposed of and that the said corporation at this time owns no tangible, visible property or assets of any kind or character.

7. And your orators show and charge the fact to be that the said corporation is insolvent; that it ceased nearly two years ago to transact any business and that it has not had in hand for upwards of a year and a half any funds or property or assets of any character with which to carry on the ordinary business of its organization, and that it has transacted no business during that period.

In consideration whereof your orators pray

1. That the said Clinton Hill Lumber and Manufacturing Company may answer the premises and each fact above stated.

2. That it may be set forth and discover the goods and chattels, rights and credits, moneys and effects and real estate of every kind and description belonging to it.

3. That your orators and other creditors and stockholders of the said Company may be paid what is justly due to them.

4. That the said Company may be enjoined from exercising any of its franchises and from receiving any debts due to it and from paying and transferr-

ing or any of its money or effects, and from trans-
acting any business.

5. That a Receiver may be appointed according
to the Statute in such case made and provided.

6. That your orators may have such other relief
as the nature of their case demands and shall be
agreeable to equity.

10 May it please your Honor, the premises consider-
ing, to grant to your orators the state's writ of
injunction as hereinabove prayed for, and also the
state's writ of subpoena, commanding the said
Clinton Hill Lumber and Manufacturing Company
to appear in Court to answer the premises and
abide such decree as shall be made against it.

COULT & HOWELL,

JOHN O. H. PITNEY, *Sols. for Complainant.*
Of Counsel.

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(Duly Verified.)

ORDER APPOINTING RECEIVER.

This matter being opened to the Court by J. E.
Howell, of counsel with the complainants and it
appearing that the order to show cause why a Re-
ceiver should not be appointed herein has been
served in the manner in said order directed and
prescribed, and the hearing thereon having been
30 continued to this day, and it appearing to the Court
that the defendant has suspended its ordinary busi-
ness and is insolvent.

40 It is on this thirteenth day of May, eighteen
hundred and ninety-five, ordered, adjudged and
decreed that the said order to show cause be and
the same hereby is made absolute, and that Thomas
N. McCarter, Jr., of Newark, be and he hereby is
appointed Receiver, with full power to demand,
sue for, collect and receive, and take into his pos-
session, all the goods and chattels, rights and cred-
its, moneys and effects, lands, tenements, books,
papers, choses in action, bills, notes, and property
of every description belonging to the Clinton Hill
Lumber and Manufacturing Company, at the time
of its suspension of business and to do and to per-
form all the duties imposed on him and required

by law, and especially by an act entitled "An act concerning corporations," approved April seventh, eighteen hundred and seventy-five.

And it is further ordered that the said Receiver, before entering upon his duties take the oath prescribed by law, and give bond to the Chancellor in the sum of five thousand dollars, conditioned for the faithful performance of his duties, to be approved as to the form and the security thereof by Mr. John Whitehead, one of the special masters of this Court. 10

ALEX. T. MCGILL,
Respectfully advised, Chancellor.

H. C. PITNEY,
Vice-Chancellor.

PETITION OF APPEAL.

To His Honor, ALEXANDER T. MCGILL, Chancellor of the State of New Jersey: 20

The petition of William S. Ketcham, Sr., William S. Ketcham, Jr. and George W. Ketcham, respectfully shows:

1. That they are informed that Thomas N. McCarter, Jr. was recently appointed Receiver of the above named defendant Corporation, and has duly qualified as such Receiver.

2. That said Receiver has presented a petition in this cause wherein he alleges that the Cumberland Lumber Company has proved an alleged claim against said defendant for the sum of seven hundred and fifteen dollars and seventy-nine cents besides interest and that Strieby, Sprague & Company have proved an alleged claim against said defendant before him for the sum of two thousand six hundred and forty-three dollars and twenty-two cents besides interest: and that he has allowed said claims as valid claims against said defendant: and in which said petition the said Receiver also alleges that your petitioners are indebted to said defendant for unpaid subscriptions to the capital stock of said defendant: and he asks your Honor to permit him to levy an assessment upon your petitioners for the purpose of paying said 30
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claims: and that your petitioners have filed an answer to the said petition of said Receiver, and a hearing has been had on said petition and answer and further hearing thereon has been postponed to give your petitioners an opportunity to appeal from the said determination of said Receiver.

10 3. That your petitioners are advised and they insist that the said claims are not debts of the said defendant, but are claims against one Frank D. Holloway for goods sold and delivered to him by said claimants and that your petitioners are aggrieved by the said action of said Receiver in allowing said claims.

20 4. Your petitioners, therefore, respectfully appeal from said determination of said Receiver allowing said claims as aforesaid to this Honorable Court (but expressly reserving all defences either legal or equitable to any pretended right of action by said Receiver or said complainants against these petitioners for unpaid subscriptions to the capital stock of said defendant), and they pray that said determination of said Receiver may be reversed and an order made adjudging that said claims are not debts of the said defendant.

And your petitioners will ever pray, etc.

FRANK E. BRADNER,

Solicitor for and of Counsel with Petitioners.

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ORDER CONFIRMING RECEIVER, &c.

40 William S. Ketcham, Sr., William S. Ketcham, Jr., George W. Ketcham and Edward E. Campfield, stockholders of the Clinton Hill Lumber and Manufacturing Company, having appealed from the determination of Thomas N. McCarter, Jr., the receiver appointed in this case, allowing the claims of Strieby, Sprague and Company and the Cumberland Lumber Company against the Clinton Hill Lumber and Manufacturing Company; and the appeals coming on to be heard in the presence of F. E. Bradner of counsel with the appellants, and John O. H. Pitney and J. E. Howell, of counsel with the claimants, Strieby, Sprague and Company, and the Cumberland Lumber Company; and the Court having heard the proofs adduced on the

said appeals and having heard the arguments of counsel thereon and being of opinion that the said determination of the said Receiver was correct and should be affirmed.

It is thereupon on this thirtieth day of October, eighteen hundred and ninety-five, ordered, adjudged and decreed that the determination of the said Receiver allowing the claims be, and the same hereby is, affirmed; and that the claims of Strieby, Sprague & Company and the Cumberland Lumber Company do stand as a valid claim against the Clinton Hill Lumber and Manufacturing Company for the full amount for which the same was proved before the said Receiver, and that the said appellants do pay the Receiver's costs of the said appeal and of this order.

ALEX. T. MCGILL,
C.

Resp. Adv.,
J. R. EMERY,
V. C.
Order limiting creditors filed.
Order barring creditors filed.

PETITION OF RECEIVER.

To the Honorable ALEXANDER T. MCGILL,
Chancellor of the State of New Jersey:

The petition of Thomas N. McCarter, Junior, the Receiver in the above entitled cause, respectfully represents:

1. That he has accepted the appointment of Receiver herein of The Clinton Hill Lumber and Manufacturing Company, and has qualified therefor by giving bond and taking the oath of office prescribed by the order of his appointment and by the statute, and that he has taken upon himself the burden of the execution of the trusts committed to him.

2. That immediately after his appointment the following claims were presented to him against the said company: One in favor of Strieby, Sprague & Company, a partnership composed of Jonathan F. Strieby, William E. Sprague, George Bubb, Nathaniel B. Bubb and Henry C. Bubb for the sum of

two thousand six hundred and forty-three dollars and twenty-two cents (\$2,643.22) of principal besides interest, and one by the Cumberland Lumber Company, a corporation, for the sum of seven hundred and fifteen dollars and seventy-nine cents (\$715.79), besides interest, and your petitioner prays leave to refer thereto whenever it shall be necessary so to do; that your petitioner has accepted the said claims and placed the same on file and that he has admitted them as claims against the said corporation.

10 3. That William S. Ketcham, William S. Ketcham, Junior, Edward E. Campfield and George W. Ketcham, claiming to be stockholders of the defendant corporation, appealed from the determination of your petitioner allowing the said claims, to your Honor, and that such proceedings were had thereon that on the thirtieth day of October, Eighteen hundred and ninety-five by a decree entered in this cause it was ordered, adjudged and decreed that the determination of your petitioner allowing the said claims should be, and the same thereby was, affirmed, and that the claims of the said Strieby, Sprague & Company and the Cumberland Lumber Company should stand as valid claims against the defendant The Clinton Hill Lumber and Manufacturing Company for the full amount for which the same were proved before the said Receiver; and your petitioner shows that the adjudication of the Court in this behalf stands un-

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40 4. That on the eleventh day of April, Eighteen hundred and ninety-nine, an order was made in this cause that the creditors of the said Clinton Hill Lumber and Manufacturing Company should present to your petitioner and prove before him under oath or affirmation or otherwise, as your petitioner might direct, and to the satisfaction of your petitioner, their several claims and demands against the said defendant corporation within thirty days from the date of that order or that they be excluded from the benefit of such dividends as might thereafter be made and declared by this Court upon the proceeds of the effects of the said corporation, and provid-

ing for publication of notice of the said order; and your petitioner shows that notice of the said order was published as in said order was directed; and that on the twenty-third day of May, Eighteen hundred and ninety-nine, by another order made in this cause, it was recited that notice of the order to limit creditors had been published as was in said order directed and that but two creditors, vis.: the two creditors hereinabove named, and filed their claims with your petitioner, and it was thereupon ordered that any and all creditors of the Clinton Hill Lumber and Manufacturing Company who had not filed and proved their respective claims against said Company within the said thirty days should be barred from making proof thereof, and that such creditors should likewise be barred from sharing in or receiving any of the assets of the said corporation or any proceeds thereof which might come to the hands of the Receiver or be divided under the order of the Court. Your petitioner prays leave to refer to the said decree or orders and to all the files and records of this Court in this whenever it shall be necessary for him to do so.

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5. That no property of the said defendant corporation has ever come to the hands, custody or possession of your petitioner as Receiver, and that although he has demanded the same, no books of account or other books or minute book or stock book of the said corporation have been delivered to him, and that the only assets of the corporation known to your petitioner are the stock subscriptions hereinafter mentioned.

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6. That your petitioner has caused to be procured from the records of the County of Essex a copy of the Certificate of Incorporation of the said The Clinton Hill Lumber and Manufacturing Company, and he annexes hereto a copy of such certificate and prays that the same may be taken as a part of this petition; and your petitioner shows that the defendant corporation The Clinton Hill Lumber and Manufacturing Company, was organized as a corporation on the twenty-first day of January, Eighteen hundred and ninety-three under the General Corporation Laws of this State by the execution by the said Edward E. Campfield, William

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S. Ketcham, William S. Ketcham, Jr., Frank D. Holloway and George W. Ketcham, of a Certificate of Incorporation of which the annexed is a true copy; that thereby the said Edward E. Campfield, William S. Ketcham, William S. Ketcham, Jr., and Frank D. Holloway, subscribed each for one hundred shares of the capital stock of the said corporation of the par value of one hundred dollars each. making the stock subscription of each of the said four subscribers the sum of ten thousand dollars, and that the said George W. Ketcham subscribed for five shares of the stock of the said corporation of the like par value and that his subscription thereto amounts to the sum of five hundred dollars.

20 7. That the said Frank D. Holloway and Edward E. Campfield, have not paid for or had issued to them any of the stock of the said corporation but that there have been issued to the said William S. Ketcham forty (40) shares of the said capital stock; to William S. Ketcham, Jr., forty (40) shares thereof, and to George W. Ketcham two (2) shares thereof, and your petitioner shows that the said eighty-two shares so issued to the said three persons are part and parcel of the shares subscribed for by them respectively in and by the said Certificate of Incorporation.

30 8. Your petitioner further shows that the Board of Directors of the said corporation have never, since its corporation, made any calls upon the said incorporators or upon the stockholders of the said company requiring them to pay into the treasury of their said company any sums of money on account of their said stock subscriptions, and that the said incorporators and stockholders have never paid any money to the said corporation or any officer thereof for its benefit and that the said eighty-two shares of stock which were issued as hereinabove stated are claimed by the holders thereof to have been issued for property purchased but in some way unknown to your petitioner.

40 9. That in addition to the claims hereinabove mentioned, your petitioner, as Receiver of the said corporation, has become bound for the costs and expenses of the administration of the affairs of the

said insolvent corporation including the costs of the suit, counsel fees and costs in the various proceedings instituted by your petitioner for recovering the assets of the said corporation, amounting in the aggregate as nearly as your petitioner can estimate, to upwards of twenty-five hundred dollars.

10. That subsequently to the organization of the said defendant corporation and the issuing of the stock hereinabove mentioned, the said William S. Ketcham departed this life intestate, and that the said George W. Ketcham was appointed administrator of his estate by the Surrogate of the County of Essex, and your petitioner shows that the said George W. Ketcham as such administrator, is a shareholder of the said corporation and is liable for the subscription made to the stock of the said corporation by the said William S. Ketcham, deceased.

11. That your petitioner is informed and believes it to be true, and therefore charges the truth to be, that the said Frank D. Holloway and Edward E. Campfield are insolvent, and that no portion of any assessment which may be levied against them could be collected.

12. That your petitioner finds that it will be necessary to make an assessment against the said shareholders to pay the debts of the said corporation and the expenses of the administration of its affairs by your petitioner as its Receiver.

Wherefore your petitioner prays that he may have the aid and direction of the Court in the premises, and that the said William S. Ketcham, Jr., George W. Ketcham, Frank D. Holloway, Edward E. Campfield and George W. Ketcham, Administrator of the Estate of William S. Ketcham, may answer this petition but without oath; that this Court will either levy an assessment upon the said stockholders of the said corporation or direct your petitioner to do so, requiring them severally to pay to your petitioner such amount of their several and respective unpaid subscriptions to the capital stock of the said company as may be necessary to pay the debts of the said corporation with interest, and the costs incident to the winding up of the

said corporation's affairs by your petitioner as its Receiver, together with the costs of this petition and the orders made thereon, and that your petitioner may have leave, when such assessment shall have been made or directed, to bring actions at common law or in equity, as your petitioner is advised may be necessary, to recover the money so assessed against the said stockholders, to the end that the same may be applied under the direction of this Court to the payment of the debts of the said corporation, with interest and the said expenses, and that your petitioner may have such other relief as the nature of his case requires and as shall be agreeable to equity.

THOS. N. McCARTER, JR.,
Receiver of The Clinton Hill Lumber and Manufacturing Company.

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ESSEX COUNTY, ss:

THOMAS N. McCARTER, JR., being sworn, says that the matters set out in the foregoing petition are true to the best of his knowledge, information and belief.

THOS. N. McCARTER, Jr.

Sworn and subscribed to
before me, this 8th day
of November, 1899.

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EDWARD SCHALER
Notary Public of New Jersey.

ANSWER TO RECEIVER'S PETITION.

The answer of George W. Ketcham, administrator of the goods and chattels of William S. Ketcham, Sr., deceased, and individually; and William S. Ketcham, to the petition of Thomas N. McCarter, Jr., receiver.

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1. These respondents have no knowledge of any of the alleged facts contained in paragraph one of said petition and can neither admit or deny the same and leave said petitioner to make such proof thereof as he may be advised to be necessary.

2. These respondents have no knowledge of any of the alleged facts contained in paragraph two of said petition and can neither admit or deny the same, and leave said petitioner to make such proof thereof as he may be advised to be necessary.

3. These respondents admit that the records in the case show that an appeal was taken from the determination of said receiver allowing the claims mentioned in paragraph two of said petition in the names of William S. Ketcham, Sr., William S. Ketcham, Jr., Edward E. Campfield and George W. Ketcham, and that an order was made affirming said determination; but these respondents deny that said William S. Ketcham, Sr., or William S. Ketcham, Jr., claimed or asserted that they were at that time stockholders of said alleged corporation, The Clinton Hill Lumber and Manufacturing Co., and these respondents further say that said appeal was taken at the suggestion of this honorable court by reason of one of the defences made by said William S. Ketcham, Sr., and others to the petition of said receiver to assess the stockholders of said defendant; that defence being that the claims of the Cumberland Lumber Co. and Strieby Sprague & Co. were not debts of the said defendant; and the Court refused to hear that defence until an appeal had been taken from the determination of said receiver allowing said claims.

The hearing of the appeal and of the receiver's petition came on together and two separate orders were made, one affirming the determination of the receiver as aforesaid, and the other granting the prayer of the petition and ordering assessment to be made.

The latter order was afterwards reversed by decree of the Court of Errors and Appeals in the last resort in all causes made on the ninth day of March, eighteen hundred and ninety-nine to which these respondents beg leave to refer. And these respondents further say that when said appeal was taken from the determination of said receiver the petition of appeal set forth the facts as aforesaid, that an answer had been filed to the petition of said receiver for leave to levy an assessment, and that the hearing on said petition and answer had been

postponed to give the respondents thereto an opportunity to appeal from the determination of said receiver, as by reference to the said petition of appeal will more fully appear.

10 And these respondents further say that in said petition of appeal from the determination of said receiver the appellants expressly reserved all defences either legal or equitable to any pretended right of action by said receiver, or said complainants, to wit, Cumberland Lumber Co. and Strieby, Sprague & Co. against them for unpaid subscriptions to the capital stock of the Clinton Hill Lumber and Manufacturing Co. as by reference to said petition of appeal will more fully appear.

20 4. These respondents have no knowledge of any of the matters alleged in paragraph four of said petition and can neither admit or deny the same, and leave said petitioner to make such proof thereof as he may be advised to be necessary.

30 5. These respondents admit that the alleged defendant corporation has no property or books of accounts, or other books, or minute book, or stock book and that no property has come to the hands of said petitioner, and that no books have been delivered to him; but these respondents deny that the alleged defendant corporation ever had any assets of any kind or description, or ever had any existence either in law or in fact to be able to own any assets, or that there ever were any actual subscriptions for the stock of said alleged corporation.

40 6. These respondents admit that the petitioner has annexed to his petition a copy of the alleged certificate of incorporation of The Clinton Hill Lumber and Manufacturing Co., taken from the records of Essex County; but these respondents deny that said alleged corporation was organized on the twenty-first day of January, eighteen hundred and ninety-three, or at any other time, and they deny that the persons who signed said alleged certificate became a body corporate, or subscribed therebv for any shares of the stock of said alleged corporation.

7. These respondents admit that Frank D. Holloway and Edward E. Campfield have not paid for

or had issued to them any of the stock of said alleged corporation; but they deny that any shares of stock of said alleged corporation were ever issued to either said William S. Ketcham, William S. Ketcham, Jr., or George W. Ketcham.

8. These respondents admit that no calls upon the alleged incorporators or upon the alleged stockholders of said alleged company requiring them to pay into the treasury thereof any sums of money on account of subscriptions for stock, have ever been made by any Board of Directors of said alleged corporation, and that no money has ever been paid for any such purpose; but these respondents deny that any shares of stock were actually issued for property purchased, or that either the said William S. Ketcham, George W. Ketcham or William S. Ketcham, Jr. claim to be the holders of any such shares of stock or are the holders of any shares of stock claimed by them to have been issued for property purchased.

9. These respondents have no knowledge of the matters alleged in paragraph nine of said petition, and can neither admit or deny the same, and leave the petitioner to make proof as he may be advised to be necessary.

10. These respondents admit that subsequently to the time of the alleged organization of said corporation and alleged issuing of stock, the said William S. Ketcham departed this life, intestate; and that said George W. Ketcham was appointed administrator of his estate; but they deny that said George W. Ketcham as such administrator is a shareholder of the said alleged corporation, or is liable for any subscription for stock of said corporation made by said William S. Ketcham.

11. These respondents have no knowledge of the matters alleged in paragraph eleven of said petition and can neither admit or deny the same; but leave the petitioner to make such proof thereof as he may be advised to be necessary.

12. These respondents deny that it is necessary to make any assessment against the alleged shareholders of said alleged corporation; and deny that said petitioner has or ever had lawful authority to

incur any expense in administering the affair of said alleged corporation.

These respondents allege and insist-

1. That the Clinton Hill Lumber and Manufacturing Co. never was a corporation either in law or in fact.

10 2. That the Clinton Hill Lumber and Manufacturing Co. never transacted any business as a corporation.

3. That no actual subscriptions for shares of stock in the alleged corporation, The Clinton Hill Lumber and Manufacturing Co., were ever made by any person or persons.

4. That an attempt was made by several persons named in the certificate of incorporation annexed to the petition herein, to form a corporation, but the said persons could not agree and the entire scheme was abandoned; and the original certificate
20 of incorporation was never filed in the office of the Secretary of State, and was destroyed by the said several persons, and no business was transacted in pursuance of said certificate, and no debts were contracted.

5. That the claims presented to said petitioner are not debts contracted by said alleged corporation; but are debts originally contracted by Frank D. Holloway individually and were made claims
30 against The Clinton Hill Lumber and Manufacturing Co. by an order of this honorable court in a cause wherein Jonathan F. Strieby, *et al.* are complainants and the Clinton Hill Lumber and Manufacturing Co. is defendant, and which order is founded on statements made by William S. Ketcham, Jr., under a misapprehension of the facts; and which order was made without authority in law to make the same, and without notice to these respondents.

6. That said Clinton Hill Lumber and Manufacturing Co. never had possession of any property
40 belonging to said Frank D. Holloway, and never owned any property of any kind or description, and that any statement heretofore made by either of these respondents in any proceeding, to the contrary, was erroneous and was made in ignorance of the facts.

7. That no claim has ever been presented by said petitioner or by said alleged corporation, or by said claimants as creditors of said corporation, the said George W. Ketcham as administrator of the estate of said William S. Ketcham, deceased, and that a decree barring creditors of his estate was duly made by the Orphans' Court of the County of Essex, prior to the filing of the petition aforesaid, and said administrator claims the benefit of said decree. 10

8. That if any cause of action ever existed against the persons who executed said certificate of incorporation of the Clinton Hill Lumber and Manufacturing Co. by reason of their signing the same, or by reason of any subscription of shares of stock in said alleged corporation, it arose more than six years before any proceeding was taken by said petitioner to make any assessment upon said subscriptions, and is barred by the statute of limitations; and these respondents claim the benefit of the said statute as fully as though they had pleaded the same. 20

9. That there are now pending in the Circuit Court of the County of Essex in this State, three actions at law against these respondents respectively to recover from them respectively the amount of money alleged to be due from them respectively for unpaid subscriptions for shares of stock of said alleged defendant corporation founded on their execution of said certificate of incorporation; and that said petitioner is the plaintiff in each of said actions; and these respondents claim that the pendency of said actions at law estops the petitioner from pursuing any remedy in this honorable court. 30

These respondents respectively submit that they have answered all the matters alleged in said petition, and they pray that they may hence be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained; and they also pray that they may have the same benefit and advantage as though they had demurred to said petition; and had pleaded the several matters hereinbefore set forth by them in bar of the demand of said petitioner. 40

FRANK E. BRADNER,

Solicitor for and of Counsel with Respondents.

Filed January 17, 1900.

ORDER DIRECTING RECEIVER TO ASSESS STOCKHOLDERS.

THOMAS N. McCARTER, JR., the Receiver herein, having presented to the court his petition by which it appears that two claims against the Clinton Hill Lumber and Manufacturing Company have been proved before him, one in favor of Jonathan F. Strieby, William E. Sprague, George Bubb, Nathaniel B. Bubb and Henry C. Bubb, partners in trade under the firm name of Strieby, Sprague & Co., for the sum of two thousand six hundred and forty-three dollars and twenty-two cents of principal, besides interest, and one in favor of the Cumberland Lumber Company for the sum of seven hundred and fifteen dollars and seventy nine cents principal, besides interest, and that he had accepted the said claims and admitted them as claims against the said corporation:

AND IT FURTHER APPEARING that William S. Ketcham, Sr., William S. Ketcham, Jr., George W. Ketcham and Edward E. Campfield appealed from the determination of the said receiver allowing the said claims as debts of the Clinton Hill Lumber and Manufacturing Company, and that on the Thirtieth day of October, Eighteen hundred and ninety-five, it was ORDERED, ADJUDGED AND DECREED THAT the determination of the said receiver allowing the said claims be confirmed, and that the said claims should stand as valid claims against the Clinton Hill Lumber and Manufacturing Company for the full amount for which the same was proved before the said receiver.

AND IT FURTHER APPEARING that no property of the said corporation has come to the hands, custody or possession of the said receiver, and that by the certificate of incorporation of the said Clinton Hill Lumber and Manufacturing Company, Edward E. Campfield subscribed for one hundred shares of the capital stock thereof, William S. Ketcham, Sr. for one hundred shares thereof, William S. Ketcham, Jr., for one hundred shares thereof, Frank D. Holloway for one hundred shares thereof and George W. Ketcham for hundred dollars, and it appearing that sixty per

five shares thereof, each of the par value of one cent. of their several subscriptions remain unpaid, and that in order to pay the debts of the said corporation it would be necessary to call upon the said members for such sum as might be necessary for that purpose, and for the purpose of paying the costs and expenses of the administration of the estate of the said corporation. And the said receiver having prayed that he might be allowed to levy an assessment upon the said incorporators and stockholders of the said corporation and to bring actions at common law or in equity to recover the amounts so assessed against them to the end that the same may be applied under the direction of this court to the payment of the debts of the said corporation and the expenses of administration as by the said petition will more fully appear.

AND IT FURTHER APPEARING that William S. Ketcham, Sr., one of the subscribers to the stock of the said corporation has departed this life, and that the respondent, George W. Ketcham has been appointed administrator of the estate of the said William S. Ketcham, Sr., and has taken upon himself the burden of such administration and is the holder of whatever interest the said William S. Ketcham, Sr., had in said corporation in his lifetime.

And the said receiver having given notice to the said incorporators and subscribers that he would apply to the court for leave to make an assessment in accordance with the prayer of the said petition, and the court having on the twenty-sixth day of December, eighteen hundred and ninety-nine ORDERED that the respondents named in the said petition should file their answer within thirty days from the date of service upon them or their solicitor of a true but uncertain copy of the said order, which order was served in accordance with its terms:

AND IT APPEARING that George W. Ketcham, administrator of the estate of William S. Ketcham, three of the said respondents filed their joint answer thereto, and that the said Edward E. Campfield and Frank D. Holloway neglected and

refused to answer the said petition, and the said cause having been brought on to a hearing in the presence of James E. Howell, of counsel with the receiver, and Frank E. Bradner, of counsel with the answering defendants, and the court having taken the proofs and read and considered the same with the exhibits in the cause:

10 AND IT APPEARING to the Court that the claim of the Cumberland Lumber Company has been withdrawn from the consideration of the Court and from the hands of the receiver; and it further appearing that there is due to the said Jonathan F. Strieby, William E. Sprague, George Bubb, Nathaniel B. Bubb and Henry C. Bubb, partners in trade under the firm name of Strieby, Sprague & Co. on their claim for principal and interest on this day the sum of Four thousand
20 three hundred and sixty-one dollars and seventeen cents; and that the said receiver has paid and incurred bills of costs and expenses in and about the execution of his said trust as receiver in this cause, amounting in the aggregate to Six hundred and eighty-four dollars and seventy-four cents, which with interest thereon amounts on this day to the sum of Eight hundred and two dollars and forty-seven cents:

30 AND IT FURTHER APPEARING that the said receiver will be obliged to incur further costs and expenses in this suit in the execution of his said trust, including the enrolling of the proceedings therein, the final decree herein and the settlement of the receiver's accounts, which costs and expenses are hereby allowed at Fifty dollars, and that he will incur further costs and expenses in and about collecting the assessment hereinafter provided for in the common law courts, which costs and expenses are allowed at One hundred dollars.

40 AND IT FURTHER APPEARING that the said receiver should be allowed the sum of One hundred and fifty dollars for his compensation as receiver herein; and that there should be allowed to James E. Howell, his counsel, a counsel fee of One thousand dollars for his services to the receiver in this cause, all of which costs, fees and expenses ag-

gregate the sum of Two thousand one hundred and two dollars and forty-seven cents, which added to the amount of the claim of the said firm of Strieby, Sprague & Co., aggregates the sum of Six thousand three hundred and forty-four dollars and ninety-seven cents, to be paid out of such assets of said corporation as may come to the hands of the said receiver. And that the said receiver has now no funds with which to pay the same and that an assessment should be made against the persons who subscribed for and now hold the stock of the said corporation.

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AND IT FURTHER APPEARING that the said Frank D. Holloway and Edward E. Campfield are insolvent and that no portion of their said subscription can be recovered from them;

IT IS THEREUPON, on this Ninth day of June Nineteen hundred and three, ORDERED, ADJUDGED AND DECREED that Thomas N. McCarter, Jr., the receiver in this cause be and he hereby is directed and authorized to assess, call and collect the said sum of Six thousand three hundred and forty-four dollars and ninety-seven cents, with interest, from the said George W. Ketcham, George W. Ketcham, administrator of the estate of William S. Ketcham, and William S. Ketcham, Jr., out of their respective subscriptions as incorporators and stockholders of the Clinton Hill Lumber and Manufacturing Company, which have not been fully paid up (but not to exceed sixty per cent. thereof), and to enforce payment of such assessment and call by suit if necessary against each of the above named delinquent subscribers and stockholders of the said corporation. This order is made, however, without prejudice to the rights of any person named in said petition or in this order to any defence which they may have to any action, legal or equitable, which may be brought against them on such alleged stock subscriptions.

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Respectfully advised,

JOHN R. EMERY,
Vice Chancellor.

W. J. MAGIE,

C.

EXHIBIT P7. APRIL 16, 1906.

PROOF OF CLAIM OF STRIEBY, SPRAGUE
& COMPANY.

*To Thos. N. McCarter, Jr., Esq. Receiver of the
Clinton Hill Lumber and Mfg.Co.:*

Jonathan F. Strieby, William E. Sprague,
George Bubb, Nathaniel B. Bubb, and Henry C.
10 Bubb, partners in trade under the firm name of
Strieby, Sprague & Company, hereby claim from
the Clinton Hill Lumber and Manufacturing Com-
pany the sum of \$2,643.22 of principal, besides in-
terest as hereinafter more fully set out; and that
the said claim arose as follows:

That prior to the 16th March, 1893, these claim-
ants as partners as aforesaid had sold and deliv-
ered to one Frank D. Holloway lumber for which
the said Frank D. Holloway owed to these claim-
20 ants upwards of \$2,400. That on the 16th March,
1893, these claimants recovered judgment against
the said Frank D. Holloway for the said claim for
the sum of \$2,518.18 damages and costs, on which
judgment execution was duly issued to the Sheriff
of the County of Essex, where the said Holloway
resided, and was by the said Sheriff returned
wholly unsatisfied. That on the 18th day of
March, 1893, these claimants, together with the
30 Cumberland Lumber Company, which had likewise
recovered a judgment against the said Holloway,
filed a bill of complaint in the Court of Chancery
of New Jersey against the Clinton Hill Lumber and
Manufacturing Company, the object and purpose
of which was to set aside a transfer of personal
property made by the said Frank D. Holloway to
the said Clinton Hill Lumber and Manufacturing
Company in fraud of his creditors, and that such
proceedings were had therein that on the 14th day
of November, 1893, a final decree was made there-
40 in, adjudging that the transfer alleged in the bill of
complaint was fraudulent and appointing a receiv-
er to take charge of the property which had been
thus transferred. These claimants annex to this
their proof of claim a true copy of such decree
which is hereby made part hereof. That by the
said decree the said Clinton Hill Lumber and

Manufacturing Company was required to pay the costs of that suit and that the said costs as taxed by the Clerk of the said Court amounted to the sum of \$76.10. That an appeal was taken from the said decree to the Court of Errors and Appeals of the State of New Jersey, and on the 4th day of February, 1896, the said decree was affirmed with costs, and that the costs of appeal to that Court were taxed at the sum of \$26.36. That the Receiver in the above entitled cause endeavored, as these claimants are informed, to obtain possession of the property which had been so fraudently transferred, but ascertained that the same had been sold by the Clinton Hill Lumber and Manufacturing Company and converted into cash, or had been transferred by that Company to some person or persons unknown to these claimants, and that upon a petition of these claimants to the said Court of Chancery, it was on the first day of April, 1895, decreed that the said Clinton Hill Lumber and Manufacturing Company should forthwith pay to these claimants and to the Cumberland Lumber Company the amounts due to them on their respective judgments, as ascertained by the said final decree, together with interest thereon and the complainant's costs of that suit and the complainant's costs in the Court of Errors and Appeals, and that execution should forthwith issue out of said Court in favor of these claimants and the said Cumberland Lumber Company against the said defendant corporation to levy and make the said sums together with costs of said petition, order and the writ of execution, and that the costs of the said petition, order and writ of execution were taxed by the Clerk at the sum of \$22.58, and that the several amounts hereinabove set out without interest aggregate the sum of \$2,643.22 above stated. And these claimants annex to this their claim a copy of the said last mentioned decree, and hereby make the same part of this, their proof of claim. And these claimants further state that the said judgment and the said decrees of the Court of Chancery remain wholly unsatisfied and uncanceled of record, and that no part thereof has ever been paid to them.

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And these claimants further claim that they are entitled to interest on the said sum of \$2,518.18 from the 16th day of March, 1893; on the sum of \$76.10, costs in Chancery, from the 14th day of November, 1893; on the sum of \$26.36, costs in the Court of Errors and Appeals, from the 4th day of February, 1895; and on the sum of \$22.58, costs aforesaid, from the first day of April, 1895.

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(Signed) STRIEBY, SPRAGUE & CO.

EXHIBIT P8. APRIL 16, 1906.
IN CHANCERY OF NEW JERSEY.

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BETWEEN
THE CUMBERLAND LUMBER
COMPANY, *et als.*,
Complainants,
AND
THE CLINTON HILL LUMBER
MANUFACTURING COMPANY,
et al.,
Defendants.

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To William S. Ketcham, George W Ketcham, Administrator of the Estate of William S. Ketcham, Sr., and George W. Ketcham individually:

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YOU ARE HEREBY NOTIFIED, that by virtue of a decree of the Court of Chancery made in this cause on the Ninth day of June, Nineteen hundred and three (a copy whereof is hereto attached), I, Thomas N. McCarter, Jr., as receiver of The Clinton Hill Lumber and Manufacturing Company, have, and I do hereby levy an assessment upon you as original subscribers to the certificate of organization of The Clinton Hill Lumber and Manufacturing Company, to raise and pay the sum of Six thousand three hundred and forty-four dollars and ninety-seven cents (\$6,344.97), with interest, and that the amounts levied and assessed against you severally are as follows:

William S. Ketcham.....\$3,095.00

George W. Ketcham, Administrator of
the Estate of William S. Ketcham, Sr...3,095.00

George W. Ketcham 254.75

And I, as receiver of the said corporation, hereby call upon you to pay the same within thirty days from the date of receipt by you of this notice of assessment, and I notify you that unless the same shall be so paid I shall bring suit against you to collect the said assessment. 10

Dated July 17, A. D., 1903.

THOS. N. McCARTER.

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William R. ...
General ...
The ...
George W. ...

