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Original Bill of Complaint.

ORIGINAL BILL OF COMPLAINT.

In Chancery of New Jersey

To His Honor Edwin Robert Walker, Chancellor
of the State of New Jersey:

The complainant, Raymond J. Baldwin, of the
City of Philadelphia and Commonwealth of
Pennsylvania, respectfully shows unto your
Honor:

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1. That he is a stockholder of the Berry Au-
tomatic Lubricators Corporation, a corporation
of the State of Delaware, duly authorized and
licensed to do business in the State of New
Jersey. That the plant of the defendant cor-
poration in the City of Newark is at 146 Summit
street, in the City of Newark, County of Essex
and State of New Jersey.

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2. That the said corporation besides having
plenary powers to do any business allowed to
corporations in the State of New Jersey to be
done in the State of New Jersey, *inter alia* to be
a merchandising, manufacturing, holding, secur-
ity and land holding company, and to own,
license, be licensed and to operate and manu-
facture under patent.

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3. Complainant further shows that the cap-
ital stock of the said defendant corporation was
originally one million (1,000,000) shares at the
par value of One Dollar (\$1.00) per share, and
thereafter the charter was amended to read cap-
italization one million (1,000,000) shares at the
par value of five dollars (\$5.00).

4. Your complainant is the holder of seven
hundred fifty (750) shares of stock, for which

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your complainant has paid the sum of thirty-four hundred dollars (\$3,400.00).

5. Your complainant was induced to purchase the said stock upon the representation that the said corporation was a going concern, maintaining a well organized place of business
10 in the City of Newark. That it was operating and selling its products to the leading manufacturing corporations in the country. Complainant shows that the said company is not a going concern; that it is constantly being pressed for money by its various creditors; that the machinery and equipment located at its place of business at 146 Summit street, in the City of Newark aforesaid, is composed mostly of second-hand machinery, with the exception of one shaper
20 machine; that the machinery and equipment contained in said plant is not fit for the use and purposes of the original plan and scope of the corporation.

6. Complainant further shows that the defendant corporation is unable to carry on its business as outlined, and is not equipped to do so. That it is unable to carry on its business because of mismanagement and dissension among
30 its officers. That recently James P. Welsh, president, was forced to resign, and a new executive has been appointed. That this merely adds to the overhead expense, and in no way benefits the corporation. That this expenditure is devoted largely to the expense of circularizing the stock of this corporation, and sending out such literature as may possibly bring about the purchase of this stock.

7. Complainant further shows that the de-
40 fendant corporation is unable to carry on its

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business as outlined, because of the lack of cash, due to the method by which its stock is being manipulated. That there are creditors constantly pressing those in charge of the Newark plant for payment of their debts.

8. Complainant further shows that the executive offices of the defendant corporation are located at 15 Broad street, in the City of New York and State of New York, where those who have control of the stock issues dictate the manner in which the plant shall be conducted and operated. That the said parties in New York have no interest in the company except from a stock promotion point of view, and that the rights of the stockholders and creditors of this corporation are being endangered because of the dissension, and conditions as they now exist.

9. Complainant further shows that this corporation was organized by virtue of an agreement existing between Christopher H. Berry and the Berry Automatic Lubricators Corporation, wherein the said Christopher H. Berry was induced to give a franchise and license to manufacture his patent to the Berry Automatic Lubricators Corporation, and in exchange therefor received one million (1,000,000) shares of stock, which shares of stock the said Christopher H. Berry was to dispose of in accordance with the instructions received from John B. Hoshor.

10. Your complainant further shows that the said issue of one million (1,000,000) shares of stock was issued to the aforesaid Christopher H. Berry, whereupon he was obliged to return to John C. Hoshor seven hundred fifty thousand (750,000) shares, which shares of stock are now

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under the control of the said John C. Hoshor. In addition thereto the said Christopher H. Berry did surrender to the treasury fifty thousand (50,000) shares, thereupon leaving two hundred thousand (200,000) shares in the name of Christopher H. Berry, which shares of stock have not yet been issued to the said Christopher H. Berry.

11. Complainant further shows that he has made demands for a financial statement of this defendant corporation, but has been unable to obtain same.

12. Your complainant further shows that he has been told by John C. Hoshor, who is the executive chairman of the Board of Directors, that two hundred thousand (\$200,000) dollars worth of stock has been sold.

13. Complainant further shows that upon his investigation of the plant as it now exists in Newark there is no evidence of any such sum having been invested in the equipment or installation of the plant, or anything of that character that would indicate that such a large sum of money had been invested for the benefit of the stockholders in this corporation.

14. Complainant further shows that upon his investigation, he is of the opinion that the machinery and equipment in said plant does not exceed the sum of eight thousand (\$8,000.00) dollars at the greatest possible valuation. That the plant is not equipped to carry on any extensive operations.

15. Your complainant further shows that it was represented to him at the time of the purchase of this stock that this corporation had an

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agreement with a subsidiary of the General Motors Corporation for the manufacture of one million (1,000,000) grease cups of this company, at a profit of one dollar (\$1.00) per cup.

16. Your complainant further shows unto this Honorable Court that the said plant as it now exists is entirely inadequate to undertake to manufacture any such number of cups or any reasonable proportion of such an order. 10

17. Your complainant further shows that the equipment and goods and chattels at the premises now occupied by this defendant corporation is not paid for, but has been purchased on conditional sales agreements, chattel mortgages and on time payments.

18. Your complainant further shows that John C. Hoshor, who is a member of the firm of Hoshor-Presby & Company, investment brokers, 15 Broad street, New York City, has control over seven hundred fifty thousand (750,000) shares of stock of this defendant company, for which no valuable consideration has been paid. That the said John C. Hoshor or his assignees are disposing of said stock without placing the funds for same into the treasury of this defendant corporation, which works to the detriment of your complainant, as well as the other stockholders and creditors of this company. 20 30

19. Complainant further shows that by virtue of the large number of shares under the control of John C. Hoshor and his assignees, that they are in absolute control of this defendant corporation. That this defendant company is unable to make progress unless the funds realized from the sale of said stock are placed in the 40

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treasury, and not used to their own personal gain and benefit.

10 20. Complainant further shows that by virtue of these facts the defendant company is unable to meet its maturing obligations. That creditors are pressing the officers of the defendant corporation for payment, and are threatening to foreclose their chattel mortgages, and to repossess the machinery sold under the conditional sales agreements.

20 21. Complainant further shows that at various times checks issued by this defendant corporation were returned because of insufficient funds, and that on December 19th, 1925, a check issued to Charles Ross for the sum of seventy dollars (\$70.00) was refused payment at the National Newark & Essex Banking Company because of insufficient funds.

30 22. Complainant further shows that although this plant has now been in existence for a period of seven months, it has not yet made any appreciable sales of its products. In fact, the only items manufactured were those that were manufactured by and under the direction of Christopher H. Berry, who is the chief engineer and vice-president of the defendant corporation, and that the said plant has had no income of any kind whatsoever. That it is being operated at a complete loss, and that they are unable to continue because of the fact that no suitable provisions are being made for financing this company. That the sale of the stock does not enure to the benefit of the treasury of this defendant company, but goes to the personal gain and benefit of John C. Hoshor and his assignees, who
40 are unknown to your complainant.

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23. That it appears to your complainant that the primary motive of the promoters of this defendant corporation is to promote the sale of the stock, and not the manufacture of its products.

24. Your complainant further shows that sometime ago the officers of this defendant corporation engaged a suite of rooms at the Wiss Building, Broad street, Newark, New Jersey, which offices were used for the promotion of the sale of the stock, as well as other purposes for the private gain and benefit of the promoters of this stock. 10

25. Your complainant further shows unto your Honor that if the holdings of John C. Hoshor and others were returned to the treasury of the defendant corporation, and if the revenue obtained from the sale of said stock was deposited in the treasury of the defendant corporation, that this defendant company might be able to overcome the difficulties it is now experiencing and being subject to. 20

26. Your complainant charges that it is absolutely necessary for the preservation of the assets of the defendant, Berry Automatic Lubricators Corporation, that a receiver be forthwith appointed by this Honorable Court, pursuant to the statute, and that pending the hearing to be had on this bill, that a receiver be appointed to preserve and protect said assets. 30

27. Complainant further shows unto your Honor that this suit is brought not only in behalf of the complainant, but also in behalf of all other stockholders of the said defendant corporation who may desire to intervene, contribute 40

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to the expense of this suit, and be made a party complainant herein, and that the said suit is a suit in equity brought in behalf of the corporation as a stockholders' suit.

10 Complainant is without adequate remedy in the courts of law and therefore prays:

1. That the said Berry Automatic Lubricators Corporation, a corporation of the State of Delaware, duly licensed to do business in the State of New Jersey, may without oath, full, true and perfect answer make to all and singular the matters and things hereinabove stated, and that it may set forth and discover the goods and chattels, rights and credits, moneys and effects of every kind and description, belonging to said
20 corporation, that your complainant and other creditors and stockholders of the said company may be paid what is due them, and that the said company may be enjoined from exercising any of its franchises and from receiving any of its debts due to it, and from paying and transferring any of its moneys and effects, and from continuing its business, and that it may be decreed to be insolvent, and that a receiver may be appointed according to the form of the statute
30 in such case made and provided, and that a temporary receiver may be appointed to take possession of the said assets pending the hearing to be had thereon, and the appointment of said statutory receiver; and that leave be granted to said receiver to incur such indebtedness and to make such expenditures as may be necessary and proper in and about the conduct of said business, and that your complainant may have such other and further relief in the premises as

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the nature of the same may require, and as may be agreeable to equity and good conscience.

2. May it please your Honor, the premises considered, to grant unto complainant the State's writ of injunction, issuing out of and under the seal of this Honorable Court, directed to the said Berry Automatic Lubricators Corporation, its officers, servants and agents, enjoining and restraining them and each of them from exercising any of the privileges or franchises granted by the act under which the said company was incorporated, and from collecting and receiving any debts due to the said corporation, and from selling, assigning and transferring any of the estate, money, funds, lands and tenements or effects of the said corporation, and also the State's writ of subpoena, likewise issuing out of and under the seal of this Honorable Court, to be directed to the Berry Automatic Lubricators Corporation, and to John C. Hoshor, therein and thereby commanding the said corporation and the said John C. Hoshor to appear before your Honor according to law and the rules of this Court, at a certain day and under a certain penalty therein to be expressed, then and there to answer the premises, to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

3. That the assignment of the shares from Christopher H. Berry to John C. Hoshor be cancelled, and that the said shares of stock be surrendered to the treasury of the defendant corporation.

4. That an injunction do issue, *pendente lite*, restraining the said John C. Hoshor and his as-

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signees from encumbering, or selling, assigning or in any way disposing of the said shares of stock, pending this suit, and thereafter permanent injunction.

10 5. That the officers and directors of the Berry Automatic Lubricators Corporation be enjoined, *pendente lite*, and at the end of the suit by final decree, from disposing of the assets of the defendant corporation.

6. That the complainant may have such further and general relief in the premises as may be agreeable to equity and good conscience.

7. And your complainant prays that the defendants, and each of them, do answer this bill of complaint, but without oath.

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SAMUEL M. HOLLANDER,
Solicitor for and of Counsel with
the Complainant.

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Affidavit of Samuel M. Hollander.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c. 10
Affidavit.

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

SAMUEL M. HOLLANDER, being duly sworn according to law, on his oath deposes and says that: 20

I am a duly licensed counsellor at law in the State of New Jersey and solicitor and of counsel of the complainant in the within cause of action.

I have had occasion to personally interview Christopher H. Berry, vice-president and chief engineer of the Berry Automatic Lubricators Corporation. That I first interviewed him on Friday, the 17th day of December, 1925. 30

That the Berry Automatic Lubricators Corporation is a company operating under a license of patent, which license of patent they have obtained by virtue of an agreement between himself and the Berry Automatic Lubricators Corporation. That in consideration of granting such a license and franchise to the Berry Automatic Lubricators Corporation, a corporation was incorporated under the laws of the State of Delaware capitalized at one million shares at 40

Affidavit of Samuel M. Hollander.

one dollar (\$1.00) per share. Thereafter the said corporation amended its charter to increase its capitalization from one million to five million dollars (\$5,000,000). The stock issued had been changed so that the share values were five dollars (\$5.00) per share in place of one dollar (\$1.00). That he obtained from the said Berry Automatic Lubricators Corporation an entire issue of one million shares, but in accordance with the financial urgings of this corporation he was obliged to return seven hundred and fifty thousand (750,000) shares to John C. Hoshor, who was the gentleman who agreed to finance the corporation for the purposes of manufacturing the articles under this patent. John C. Hoshor is the head of the firm of Hoshor, Presby & Company, investment brokers, 15 Broad street, New York City. Mr. Berry then explained to me that he was persuaded to turn over fifty thousand (50,000) more shares, which shares were surrendered to the treasury of this corporation.

Mr. Berry stated to me that he believed that Hoshor, Presby & Company were reliable people and that they would carry out their original agreement and properly finance the manufacture of the patent articles, but that during the past seven months since their organization he has been unable to get the proper kind of co-operation to such an extent that would justify the further continuance of this corporation. He related to me how at various times he was unable to get merchandise to continue the manufacture of its product. That at times the check given for payroll was no good because of insufficient funds. That at various times checks were returned because of insufficient funds. That orders had been placed with large concerns for the

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Affidavit of Samuel M. Hollander.

manufacture of certain dies, jigs and equipment, but that the firms who originally agreed to deliver the goods have now refused unless they receive their money in advance or unless the funds are deposited in such a manner that the concerns would be assured of their money when they had completed the manufacture of the articles. One such concern is Bernhart Brothers & Spindler of Chicago, Illinois. 10

He also related to me how various creditors have been pressing them for the payment of their debts and that some of the concerns have threatened to remove the machinery that they have purchased from them because of the fact that the terms of the payment had not been complied with.

That most of the machinery in the premises as it now exists were bought on time payments, conditional sales agreements and covered by chattel mortgages, notwithstanding the fact that Mr. Hoshor assured Mr. Berry that at least fifty thousand dollars (\$50,000) would be available at any time for the purpose of equipping the plant and installing same, but at no time have such funds been available and that he has been operating this plant under the most trying and difficult conditions. That up to this time no orders of any consequence have been fulfilled and, in fact, they are unable to fulfil any orders if they are received because they are not equipped to do so. 20 30

Mr. Berry also informed me that sometime ago the representative of the New York office engaged a suite of offices in the Wiss Building, Broad street, Newark, New Jersey, and that there is now rent accumulating for the last few months. That Mr. Van Houten, the manager of 40

Affidavit of Samuel M. Hollander.

said building, has threatened to institute suit several times and insists upon payment being made at once. That the rent is accruing by virtue of a written lease at the monthly rental of one hundred dollars (\$100.00) per month.

10 That under the present situation they are doing as well as they can, but most of the work has to be done by hand or with inadequate equipment. The result thereof is that the product that is produced is not up to the standard and cannot meet with the requirements as set forth in the specification of the patent.

That the dissension among the stockholders who control the corporation is such that it does not enure to the benefit of the stockholders or the creditors.

20 That there does not seem to be any co-ordination between his views and those who are the financiers.

That whenever an agreement is made respecting an audit of the books or the employment of a certain class of help or employees, the orders are generally countermanded and other employees, unqualified, are put in their stead.

30 That at the present time there is an overhead being burdened against this corporation, which overhead is entirely unjustified and cannot serve a good purpose.

40 That recently a new executive has been appointed instead of Mr. James P. Welch, whose sole function seems to be to devote his time and effort in the circulation of literature portraying what this company is supposed to do but which it does not and cannot do. That statements contained therein are in many respects untrue and incorrect and is bound to bring dissension and

Affidavit of Samuel M. Hollander.

serious charges against this corporation and its management.

I have had other talks with Mr. Berry and I am convinced that Mr. Berry is the victim of circumstances, being misled entirely by the promoters of this corporation. That Mr. Berry has good intentions, but that because of the manner in which he has been inveigled into this promotion scheme, he is unable to rectify the situation and that under the present circumstances it is my opinion that a receiver or an officer of this Court should be appointed to protect the stockholders and creditors from further jeopardization and damages to their interests. 10

SAMUEL M. HOLLANDER.

Sworn and subscribed to before me this 21st day of December, 1925. 20

EDWARD H. MARTLING,
Notary Public of N. J.

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Affidavit of Raymond J. Baldwin.

pany had placed an order for one million grease cups lubricators, which the company would have a profit of \$1.00 per item. He also informed me that the General Motors Company were endeavoring to seek control of this company and had already made an offer of Twenty-three dollars (\$23.00) per share for this stock. The shares which I purchased were billed to me at the rate of some at \$1.50 and some at \$5.00. My sum total invested was Thirty-four hundred dollars (\$3,400.00). 10

The fact that Mr. Crowill represented to me that the company had an opportunity to sell out to the General Motors Company at \$23.00 per share did not concern me so much as the merits of the patent, and the fact that the company was supposed to be a going and solvent concern. These facts alone prevailed upon me to induce me to buy the stock, as I have full faith and confidence in the merits of the patent and if the company had been conducted on a proper and businesslike basis the product of this company has a salable and marketable value. 20

A short time after I received these shares of stock which I acquired and after having paid for them, I made inquiries as to the conduct of the business of this corporation and I personally made a trip to Newark to investigate the conditions of the plant, and to the executive offices of the company at 15 Broad street, New York, New York. Upon arriving at the place of business in Newark, for the first time I observed that the true condition and affairs were not as they were represented and outlined to me by Mr. Crowill. I made my trip to the New York office of the Berry Automatic Lubricators Corporation and was ushered into the office of the 30 40

Affidavit of Raymond J. Baldwin.

Hoshor, Presby Company, investment brokers, 15 Broad street, New York, New York. It was there I interviewed Mr. John C. Hoshor and I was informed by Mr. Hoshor that the company had sold Two hundred thousand dollars (\$200,000) worth of its stock. I was somewhat amazed at this statement, because at my observation of the factory in Newark I was convinced that the material and equipment in the premises for the use of the Berry grease cups, if it had been purchased new it would not have exceeded a cost of Twelve or Fifteen thousand (\$15,000) dollars, and in my estimation as a contractor in mechanical installation and equipment work, the the equipment on hand was not worth more than Eight thousand dollars (\$8,000.00) at the highest possible figure as it now exists, and for the purpose of sale value would not have a value exceeding Six thousand dollars (\$6,000.00). I asked for a financial statement and I was advised by Mr. Hoshor that this was not available at this time because of the fact that the accountants were still working on the matter.

On December 12, 1925, I wrote a letter to the Hoshor, Presby & Co., of which the following is a true copy:

30 "Wissinoming, Phila., 12/12/25.

Hoshor, Presby & Co.

Gentlemen:

You would occur me a great favor if you would kindly render a financial statement of the Berry Automatic Lubrication Corp. There are several questions I would like to have asked you when I saw you in your office last week but did not have the time to do so. Why is it that with the amount of stock

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Affidavit of Raymond J. Baldwin.

you have sold, (\$200,000.00 if I am not mistaken you informed me), that you must purchase your machinery you have in the Newark plant on time payments. When I was in the plant office the other day I overheard Mr. Berry trying to order a \$500.00 machine which had to be bought on time payments. I have also been informed that one of the mechanics threatened to put the sheriff on the place for the non-payment of his wages which was held up, as I got it, on two occasions. You told me that there has been \$30000.00 worth of equipment placed in the plant. I estimate the cash value of the machinery to be about \$15000.00 (when new). With this condition and information I found at the plant did not put me in a very good opinion of the Corp.

And as to Mr. Berry, he appears to be a very capable man and understands his business and product perfectly but there appears to be something about the place that has tied his hands which is holding back production. This is not only my opinion but that of several other stock holders of Phila. that have visited the factory, especially C. A. Daniels, Edw. Costello.

Not intending to throw a monkey wrench into wheels of progress but desiring to know a few questionable facts, I beg to remain

Very truly yours,
Raymond J. Baldwin."

In response thereto I received a copy which in no way explains my position in the matter, and I also attach a copy of their response to me and make it a part of this affidavit.

Affidavit of Raymond J. Baldwin.

“December 14, 1925.

Reymond J. Baldwin, Esq.,
5908 Tulip Street,
Wissinoming, Phila. Pa.

Dear Sir:—

10 We acknowledge receipt of your letter of
December 12th and wish to advise that our
accountants are now auditing the Berry
books and as soon as they finish and render
us a financial statement we shall be glad
to mail you a copy of same.

20 Regarding the other matters in your let-
ter, we wish to state that up to the present
date we have placed about 28,500 shares of
Berry stock at prices ranging from \$1.50
per share to \$7.50 per share. The public
price we are now quoting is \$15.00 per
share. However, there still remains about
2100 shares that we are permitted to place
at our pleasure at \$7.50 per share. You
have by this time undoubtedly received the
Berry booklet for stockholders setting forth
the special offering.

30 The writer does not have the actual fig-
ures on the investment in machinery in the
Newark factory, but can state that as the
Sales Department has found that the brass
finished cups will be only from 5% to 20%
of the Corporation's business, preference
has been given to the manufacture of the
Die Casting finish cups wherever possible.

40 There is no question about Mr. Berry's
ability, but you must remember that in the
formative stage of such a business as we
are trying to build up, many problems come
up where business experience other than
that of a master mechanic and practical en-

Affidavit of Raymond J. Baldwin.

gineer is needed. We and are associates are supplying that experience to the best of our abilities, with one aim only in view, that of creating a large and prosperous corporation, and making profits for its stockholders, among which are ourselves.

The writer wishes to confirm his statements made to you on your recent visit to this office, that if you are in any way dissatisfied with your investment in Berry stock we shall be most delighted to place your holdings with some other stockholder at the prices paid by you.

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Cordially yours,

HOSHOR, PRESBY & CO., Inc.,

By John C. Hoshor."

I made inquiry at the Newark plant relative to the statement made to me by Mr. Crowill concerning the contract of the General Motors Company and interviewed Mr. Christopher H. Berry, Vice-President and Chief Engineer of this company as Newark plant, and I personally asked him whether they had a contract with the General Motors Company and he said "No." I further interrogated Mr. Berry along the lines for the purpose of ascertaining whether any big contracts had been made or any big sales had been made of the products of this company and I was amazed to learn that the largest amount of grease cups ever sold to any one concern was twenty-four (24) grease cups which were sold to the Splitdorf Electrical Manufacturing Company of Newark, New Jersey, and this was in the nature of a missionary order. I then asked him whether there were any other contracts pending and Mr. Berry informed me that there

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Affidavit of Raymond J. Baldwin.

were no other contracts pending and that all the products manufactured to date was in the nature of missionary products for experimental purposes, and under the present circumstances all that the employees of the concern are doing is manufacturing models and samples and doing tool work to manufacture these samples.

10 I also asked Mr. Berry conditions concerning the finance and what they were doing to meet the demands of the creditors. Mr. Berry informed me that he was being considerably annoyed by various creditors who were constantly pounding them for their money and Mr. Berry was obliged to refer them to the New York office for their funds and payment of their debts.

20 I then asked Mr. Berry if he had anything to do with the issuance of checks and what disposition was made of funds after they received money. Mr. Berry informed me that he never received any of the funds; that they were handled through the New York office, and that so far as the issuance of checks were concerned, sometimes he countersigned checks, but that was not always the case because there were others in the New York office who would countersign checks.

30 I then inquired of Mr. Berry about the conditions of its affairs and whether checks were returned, and I learned to my amazement that there were various times when checks aggregating from sums as low as One dollar and thirty-five cents (\$1.35) returned from the National Newark and Essex Banking Company because of insufficient funds.

40 I then inquired in what manner the machinery in the premises were purchased and I was informed as a result of this conference that the machinery was all second hand; that it was pur-

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chased on conditional sales, chattel mortgages, time payments, and some of it, but very little of it, on open account and notes. The only one machine which is a new machine in the entire plant is a shaper, which machine was purchased on time payments represented by agreement and notes. I learned that small machines bought from the Productive Machine & Tool Company, Broome street, New York City, was purchased on conditional sales agreement and is covered by notes and chattel mortgages in the sum total of Eight hundred forty dollars (\$840.00), Three hundred dollars (\$300) of which was paid upon delivery of goods, leaving a balance of Five hundred forty dollars (\$540.00) represented on the terms above stated.

I also found that a universal miller machine was purchased from the Henry Prentiss & Company, Inc., of Jersey City, New Jersey, upon terms subject to chattel mortgage and time payments in the amount of One thousand three hundred and seventy-five dollars (\$1,375). I was very much surprised to learn all these facts and then I thought I would ask Mr. Berry details concerning the manner in which the company was purchasing its equipment and materials for the purpose of producing its product, and I asked particularly about the dies, and for the first time I learned that they were unable to obtain dies because of the fact that the Berry Automatic Lubricators Corporation had no financial rating and could not pay cash for the manufacture of the dies and I learned that there was an order for which shipment had been held up amounting to Fourteen thousand dollars (\$14,000) and which order was placed with the Bernhart Brothers & Spindler Brothers of Chicago, Illinois. It was

Affidavit of Raymond J. Baldwin.

originally arranged that this company would ship the merchandise that the company required upon a certain percentage in cash and the balance on sight draft bill of lading, but when the Bernhart Brothers & Spindler Brothers were unable to obtain any financial references they refused to proceed with the manufacture of the dies unless the entire amount was placed with bankers or those able to pay the amount when the manufacture was complete.

I made observations of the conditions of the plant and I am firmly convinced that this plant, as it now exists, is not equipped to properly carry on the original purposes of manufacturing the Berry automatic lubricator unless additional machinery and equipment is obtained and unless sufficient funds are immediately available to provide proper material, mechanics and laborers to promote and develop the entire product.

As I have been able to observe the situation, Mr. Berry appears to me to be a very skillful and capable mechanic and an inventor of some repute, but the entire transaction and relationship as exists between Christopher H. Berry and the Hoshor-Presby & Company is that of a stock promotion proposition wherein Mr. Berry had been innocently drawn into without knowing the consequences of his contractual relationship between the Hoshor-Presby & Company and the Berry Automatic Lubricators Corporation. As I have been able to learn the facts they are as follows: In June, 1925, or thereabouts, Mr. Berry was approached by representatives of the Hoshor-Montayne & Company, Inc., with the idea in mind of financing Mr. Berry in the production of his patent and thereupon they organized the company under the laws of the State of

Affidavit of Raymond J. Baldwin.

Delaware for one million shares of capital stock at One dollar (\$1.00) a share, and thereafter the entire issue of stock was given to Mr. Berry for the franchise rights and use of his patent, who in turn was under contract to deliver to Mr. John C. Hoshor seven hundred and fifty thousand (750,000) shares, leaving in his possession two hundred and fifty thousand (250,000) shares. Mr. Berry, in order to conform to the solicitations and urging of Mr. Hoshor and others, voluntarily assigned fifty thousand (50,000) shares as a gift, which shares were supposed to have been surrendered to the treasury, thereby leaving in Mr. Berry's name on the transfer books of the company two hundred thousand (200,000) shares of this stock, which stock has never actually been delivered to Mr. Berry.

Thereafter the company increased its capitalization from One dollar (\$1.00) per share to Five dollars (\$5.00) per share and the capitalization became known as a Five million (\$5,000,000.00) corporation and the stock was again promoted and sold at Seven dollars and fifty cents (\$7.50) per share. I then asked Mr. Berry whether he participated in any of these stock promotion sales and whether he received any cash in addition to the stock, and he informed me that he received none except his salary in working for the plant, and I believe that that statement is correct because Mr. Berry informed me at times he was unable to even obtain his salary. I am convinced that the funds derived of the stock which has been sold, very little of it, if any, ever reaches the treasury of the Berry Automatic Lubricators Corporation.

As a further inducement to the purchase of the stock I was assured that the stock would be

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Affidavit of Raymond J. Baldwin.

listed on the Curb some time during the month of October, 1925. This I have ascertained has never been done.

10 It appears to me that most of the funds obtained in the sale of this stock goes to cover the expenses of promoting and selling this stock and that the assets in the name of the corporation are entirely inconsequential compared to the issue of stock sold, and that this company is not solvent; that it is not operating at a profit; that it cannot operate at a profit under its present circumstances, and that those stockholders who have invested money in this corporation are now being endangered by further jeopardization because of the manner and method in which this company is being operated, conducted and financed, and I believe that it is to the best interests of the stockholders and creditors that the assets be conserved and that someone under the direction of this Court be authorized and appointed to supervise and protect the interests of its creditors and stockholders.

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RAYMOND J. BALDWIN.

Sworn and subscribed to before me
this 21st day of December, 1925.

30 DAVID NUDELMAN,
Notary Public of N. J.

Affidavit of James P. Welsh.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c. 10
Affidavit.

STATE OF NEW JERSEY, {
COUNTY OF ESSEX. { ss.

JAMES P. WELSH, being duly sworn according to
law, on his oath deposes and says: 20

I am an engineer by profession, duly licensed
under the laws of the State of New York as a
professional engineer. I have been actively
engaged in engineering work for the past fifteen
years, and am thoroughly familiar with the re-
quirements of this defendant company from an
engineering and business point of view. I have
been a member of the New York Public Service
Commission, acting as Assistant Engineer, and 30
have acted as Assistant Engineer on reports for
the large utility companies in New York City
and in Alabama.

I have been associated with the Berry Auto-
matic Lubricators Corporation for a period of
six weeks, and held the position of President for
a period of four weeks. I became President of
record on November 10, 1925, at which time I
was duly elected at a meeting of the Board of
Directors. Thereafter I took steps for the pur- 40

Affidavit of James P. Welsh.

pose of conducting an investigation of the affairs of this corporation, and on the 18th day of November, 1925, I addressed a communication to the Secretary and Treasurer of the company, at its New York address, 15 Broad street, where the books and matters of record are in custody, of which the following is a copy:

November 18, 1925.

E. L. Presby, Secretary & Treasurer,
Berry Automatic Lubricators Corp.,
15 Broad Street,
New York, New York.

Dear Sir:

Mr. Hoshor has undoubtedly informed you of my request for a financial statement of the affairs of the Berry Automatic Lubricators Corp.

I wish to call to your attention the necessity for an immediate report on this matter from you as Secretary and Treasurer of the Company. I shall expect you to have this report for me by Friday morning when I shall call at your office.

Very truly yours,

Berry Automatic Lubricators Corp.,

By

President.

In this letter, as will be noted, I asked for a statement of the affairs of the company, and an opportunity to examine the books. I received no response to this communication.

I then looked over such records as the Secretary and Treasurer had of the corporation's affairs, but found that they were incomplete, and therefore it was impossible for me to find out

Affidavit of James P. Welsh.

about the affairs of the corporation. Under those circumstances I requested that they call in an accountant to set up the books, so as to make it possible that they get out a financial report. I was informed that they would have an accountant in to go over the affairs of the company within a few days. However, the accountant who was called in, in accordance with their statement, simply went over their books as investment brokers, and did not have time to go further into the affairs of the Berry Automatic Lubricators Corporation. No report was issued, nor did I receive any memorandum of any facts relating to the affairs of the company.

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On December 10, 1925, I attended a meeting of the Board of Directors of the company at 15 Broad street, New York City, the administrative office of this corporation, at which time I called to the attention of the Board that I had requested certain information, and had received no reply from anyone. At this meeting E. L. Presby, Secretary and Treasurer, stated as his reason "I did not like the tone of the above letter, and consider it insulting, and the more I think of it, the more I think of it as a joke."

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In my short career as executive officer of this company I made inquiry regarding the expenditures of the company in respect to the purchase of machinery. Although there is considerable second-hand machinery on hand which may have cost in the neighborhood of \$18,000, my examination of the records would not disclose sufficient information to ascertain the correctness as to what part of this machinery had been paid for. However, from the information I can gather I learned that approximately the sum of \$2,000 had been paid on the principal indebtedness of

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Affidavit of James P. Welsh.

said machinery. The greater part of this indebtedness, however, is covered by notes, which notes have not yet matured.

10 In my opinion I do not value the machinery and equipment in the premises now used by the company at 146 Summit street, Newark, New Jersey, at more than between \$8,000 and \$10,000, and that valuation is based on the presumption that the machinery is usable and workable. As the plant now exists said plant is not equipped to carry on and function for the purpose of producing the material which this company was organized to produce on an economic basis. That it will require considerable more capital to properly equip this plant, and from my knowledge I know that this organization as it now exists is not prepared to meet such conditions, because of
20 the fact that there is no co-operation, and there is insufficient capital to carry on the plans and scope of its purpose and intention.

On Thursday morning, December 10, 1925, it had been agreed by the Board of Directors that I was authorized to engage the services of an accountant to make an examination of the books of the Berry Automatic Lubricators Corporation, and to examine the books of Hoshier, Presby & Co., for the purpose of ascertaining the true
30 state of affairs, and to set up and install the proper set of books for the Berry Automatic Lubricators Corporation.

On Saturday, December 12, 1925, I was notified of a request for my resignation. However, I endeavored to have the accountant make his examination of the records, and replied to them on the fourteenth of December as per the following letter:

Affidavit of James P. Welsh.

“December 14, 1925.

John C. Hoshor, Esq.,
15 Broad Street,
New York City.

My dear Mr. Hoshor:

Your letter, in regard to your request for
my resignation, received and I wish to state 10
that I shall not voluntarily tender my
resignation at the present time. Therefore,
your methods of procedure, if you wish to
have me removed from Office, will be to
bring the matter up at the Board of Di-
rectors' meeting tomorrow morning and de-
mand my resignation on such charges, or
for such reasons, as you have in mind.

I trust that you will appreciate that I am
acting within my legal rights in this matter. 20

Cordially yours,

President.”

On December 15th I was officially removed by
vote of the Board of Directors, it being, how-
ever, noted on the minutes of the said meeting
that this was no reflection upon my ability, in-
tegrity or character in respect to my actions as
President, during the period of my presidency.

I know of my own knowledge that during the 30
period I was President of this company that
there were frequent demands made by merchan-
dise creditors for payment of their claims
against this corporation, which claims were due,
and not paid. As President of the company I
had nothing to do with the finances of the cor-
poration, and was not even authorized to sign
checks.

From my personal observation of the affairs
of this company it appears to me that the Hos- 40

Affidavit of James P. Welsh.

10 hor, Presby & Co., who are the present promoters of this company, have had for sometime past control of the affairs of the Berry Automatic Lubricators Corporation through its officers, John C. Hoshor and Edwin L. Presby. Both of these gentlemen are members of the Board of Directors of the Berry Automatic Lubricators Corporation, John C. Hoshor being a member of the Executive Board of the defendant company. Neither one of these gentlemen are mechanics or engineers and are not in any respect able to take care of the business of this company. They are not qualified to conduct the affairs of this corporation, because it is purely a technical and scientific matter, requiring engineering skill to properly handle same.

20 It appears to me that the only real object that Messrs. Hoshor and Presby have in this company is to promote it from the standpoint of view of stock brokers, who manipulate the promotion of the company from that point of view, and for their own personal gain and benefit. During the time of my office I found it absolutely impossible to get any co-operation, and any time I made a suggestion for the benefit of the affairs of this company along constructive
30 lines, it was ignored.

I am firmly convinced that this company is being exploited and being improperly managed and conducted, particularly so because of the manner and characteristics reflecting upon the stock promotion schemes advanced in the sale of its stock, and that because of these conditions the company is being improperly managed, dis-
40 sension is existent between its several officers and the operative management of the affairs of this company are being hindered and delayed

Affidavit of James P. Welsh.

to the end that the interest of the stockholders, who have actually invested cash and bought stock of this company, are being endangered, and subject to suffer losses, unless an officer of this Court is appointed to marshal and protect the assets of this company, and take such other steps as shall seem proper and just under the circumstances. 10

I have read the annexed bill of complaint and believe same to be true, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

JAMES P. WELSH.

Sworn and subscribed to before me
this 19th day of December, 1925. 20

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

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Affidavit of Charles Ross.

tions along those lines, by John C. Hoshor, who is a member of the firm of Hoshor, Presby & Company, stock brokers, who is a member of the executive committee of the Board of Directors of the Berry Automatic Lubricators Corporation, and under whose directions and instructions most of the operations of this plant were conducted. 10

I notice that a great deal of effort and stress has been devoted to the sending out of literature relating to the purchase of the product of the Berry Automatic Lubricators Corporation, and a general stock promotion scheme was in full action and progress. I know of my own knowledge that the Berry Automatic Lubricators Corporation did not have orders for the manufacture of its product for all of the concerns mentioned in the literature published and sent out by the Hoshor, Presby & Company, and so far as I know the Berry Automatic Lubricators Corporation never had an order for one million (1,000,000) cups from the General Motors Company, or any of its subsidiary corporations. I know of my own knowledge from the present condition of the plant that this company is not able to manufacture one million (1,000,000) cups, because it neither has the equipment, the stock on hand, nor the personnel with which to commence such operations. 20 30

I also know of my own knowledge that the Albert Foundry Company of Newark, New Jersey, from which the defendant company gets its material, held up delivery because they did not pay its bills on time. I know of my own knowledge that this company has been having difficulty for sometime past in meeting its obligations. That many of its checks have been re- 40

Affidavit of Charles Ross.

turned for insufficient funds. That at this time there are a great many creditors pressing this concern for payment, and this concern has not yet paid these creditors. That many of the accounts are past due, and that there are no funds on hand at this time to pay these obligations.

- 10 That this company cannot operate unless it receives its castings from the above-mentioned concern, or any other foundry which will furnish them, but the foundries will not deliver merchandise unless financial arrangements can be made, and none have been made up to this time.

- 20 I know of my own knowledge that the machinery and equipment located at the plant of the company, at 146 Summit street, Newark, New Jersey, with the exception of the shaper, is all second-hand. That this machinery can be duplicated in the open market today, and installed, for a sum approximating \$8,000. That this machinery was purchased on a conditional sales agreement, notes, and some of it on open account, but most of the indebtedness for the said machinery is covered by liens, which require payments on specific dates, and as more particularly set forth in the agreements.

- 30 The present staff of working men, including mechanics, laborers and skilled operators, do not exceed five men. The most that were employed at this plant was thirteen in all. We were devoting our entire time to the manufacture of sample orders, no substantial order of any kind having yet been received by the company for the manufacture of its patented product.

- 40 I have severed my relationship with this company and have no interest in these proceedings.

Affidavit of Charles Ross.

I am of the opinion that this company is insolvent.

On Saturday, the 19th day of December, 1925, I received a check for seventy dollars (\$70.00) in payment of my wages to date, which check I attempted to cash at the National Newark & Essex Banking Company of Newark, New Jersey, but payment was refused, because of the fact that there are insufficient funds to meet same. I know of my own knowledge that various checks have come back for insufficient funds, and I was present at times when various creditors made demands for the payment of their indebtedness. There are now many creditors whose claims are past due, which this company has not paid. I know that the account of the Newcomb Spring Corporation, of 238 40th street, Brooklyn, New York, is past due, and they are pressing the defendant corporation for payment. The amount due them is four hundred dollars (\$400.00).

It is my opinion that this company is in want of funds because of the fact that instead of the funds derived from the sale of its stock being turned into the treasury, it is being expended in the further promotion of the sale of its stock. That instead of promoting the interests of the company the promoters are promoting the sale of the stock, *which* such tremendous expense that there is nothing left for the treasury. That the business is being run at such great overhead expense that it is unable to survive the present conditions.

It is my firm belief that the assets of this company should be conserved, and someone should be appointed, under the direction of this Court, to protect the assets for the benefit of those

Affidavit of Albert M. Grossman.

creditors who have sold merchandise to the defendant corporation, and those stockholders who have invested their money.

10 I have read the annexed bill of complaint and believe same to be true, except as to the matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

CHARLES ROSS.

Sworn and subscribed to before me
this 21st day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

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

ALBERT M. GROSSMAN, being duly sworn according to law, on his oath deposes and says:

I am an attorney and counsellor at law of the State of New York.

30 I was present at a meeting of the Board of Directors of the Berry Automatic Lubricators Corporation, held at the office of the corporation at 15 Broad street, New York City, at ten o'clock in the forenoon, on Tuesday, December 15, 1925. I took active part in the discussion of the corporate matters concerning the finances and financing of the corporation.

40 This meeting lasted from ten o'clock until one o'clock. A resolution calling for the President's resignation was passed. I objected to having the resolution moved at that time, and asked that it be tabled until such time as I was given informa-

Affidavit of Albert M. Grossman.

tion which I requested from the President in his official capacity. I requested that the President let me have a statement showing the present financial condition of the corporation. The President informed me that due to the incomplete condition of the books of the corporation and the state of affairs of the finances, he was not in a position at that time to render a statement or tell me anything concerning the financial condition, or to even tell me anything definite concerning the assets of the corporation. This he told me was due to the fact that although he had requested from the Secretary and Treasurer and the other officers of the corporation that they render him an accounting, informing him as President of the corporation just what the financial condition and status of the corporation is, this request was ignored,

The President then referred me to the Secretary and Treasurer for a financial statement, and a statement as to the present condition of the corporation with relation to the sale of its stock, the purchase of its machinery and merchandise and sale of its finished product.

Edwin L. Presby, the Secretary and Treasurer, refused to divulge any information, but referred me to his attorney, who was present at the meeting, and whose name is George Julian Houtain. Mr. Houtain did the answering for Mr. Presby, although later, under pressure, Mr. Presby admitted that the assets of the corporation were of the value for which they had purchased same at about \$18,000, almost the entire amount of which has not yet been paid for. He told me that these assets were purchased on notes, the majority of which are not as yet due

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Affidavit of Albert M. Grossman.

and have not been paid. James P. Welsh was then compelled to resign as President.

10 I called for a statement and was told that an accountant was engaged, but he was refused access to the books, due to the fact that he was not a certified public accountant of the State of New York. A resolution was then passed authorizing Christopher H. Berry to engage an accountant, the Hoshor, Presby & Co. agreeing to pay for his services, which company in turn was to bill the Berry Automatic Lubricators Corporation, and was to be limited to the sum of \$175.00. I called on the Hoshor, Presby & Co., to have them place in my hands, to be held in escrow, their check for \$175.00 to pay for the accountant's services, in accordance with our understanding, but this request was refused.

20 From my observation, and from what I have been able to gather from the facts and discussion of the accountant, and the examination of the minute book and letters, I have seen that there has been an issue of 1,000,000 shares of stock at a par value of \$1.00, which was subsequently raised by the filing of an amended charter to the par value of \$5.00 per share. About 28,500 shares of stock were sold to the public at a price ranging between \$1.50 and \$7.50 per share. A total of 1,000,000 shares were issued, which were disposed of in the following manner: 30 The 1,000,000 shares were originally issued to Christopher Berry, in consideration of his turning over to the corporation, the exclusive use and franchise of the patent rights applied for by Christopher H. Berry in the United States and twenty-six other countries. As a further condition to the commencement of this corporation, Christopher H. Berry executed 750,000 40

Affidavit of Albert M. Grossman.

shares to be turned over to John C. Hoshor for the purpose of promotion of this company. Christopher H. Berry, as further evidence of good faith on his part and to further instill the interests of the company, voluntarily surrendered 50,000 shares of stock to the treasury, which stock was supposed to have been sold, and the funds realized from same to be turned into the treasury for the purpose of assisting in carrying out the purpose of this corporation, thereby leaving in possession of Christopher H. Berry out of the original issue, 200,000 shares. From what I further learned of the affairs of the company, and in accordance with a letter which I have had an opportunity to read, which letter was addressed to Raymond J. Baldwin, 598 Tulip street, Philadelphia, Pa., I learned that 28,500 shares of the Berry stock was supposed to have been sold at prices ranging from \$1.50 to \$7.50 per share, but nowhere have I been able to learn what became of the funds secured from the sale of said stock.

From my personal observation of the affairs of the company and as a result of my investigation, I am satisfied that the funds thus received never went into the treasury of the company, because I demanded a statement and an explanation as to what happened with all the money received from the sale of the stock, and no one present was able to offer any explanation or render a statement.

John C. Hoshor as chairman of the executive committee assured me that an accountant would be supplied upon request, and in accordance with our understanding I requested the appointment of an accountant. The further understanding was that upon request of the appointment of an

Affidavit of Albert M. Grossman.

accountant, that in response to that request I would also be forwarded a check for \$175.00, which was to cover all the expenses relative to that investigation by an accountant. I wrote to Mr. Hoshor in accordance with our understanding, requesting a check for \$175.00. This request has not been complied with.

10 At the meeting held on December 15th it was agreed by resolution that the Hoshor, Presby & Co. would not interfere with the employment of mechanics and such plant and office help as designated by Mr. Berry, but immediately after the passing of this resolution, on the 16th day of December, 1925, they disregarded the resolution, and immediately set to undertake to discharge certain employees designated by Christopher H. Berry, and otherwise disrupt and
20 break up the morale of the present existing corporation.

I have also learned of my own knowledge that this company sometime ago rented a suite of offices in the Wiss Building, 671 Broad street, Newark, New Jersey, at the monthly rental of \$100.00. That there is now due and owing two months' rent, which is long past due, and which has not yet been paid, although payment has
30 been promised for sometime past. That the superintendent of the Wiss Building has threatened to institute proceedings unless payments are made forthwith. That this rental is based on a written lease, and due rents are accruing from month to month, and are not being paid, although payment was promised upon numerous occasions.

I know that this company has no credit rating and is unable to obtain credit, because of the
40 fact that it has not been able to issue a financial

Affidavit of Albert M. Grossman.

statement that would meet with the approval of the credit men with whom they have been endeavoring to do business.

At this meeting which I attended a lengthy discussion was had regarding an order placed with Bernhard Brothers & Spindler of Chicago, Ill., amounting to \$14,000, which order was placed for merchandise necessary to carry on and produce the produce of this company. I learned at said meeting that the company refused to ship the merchandise or proceed in the development of the order of said equipment and merchandise unless the goods were paid for sight draft, bill of lading. 10

ALBERT M. GROSSMAN.

Sworn and subscribed to before me this 21st day of December, 1925. 20

DAVID NUDELMAN,
Notary Public of N. J.

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Answer of Berry Automatic Lubricators Corp.

**ANSWER OF BERRY AUTOMATIC
LUBRICATORS CORPORATION.**

10 The defendant, Berry Automatic Lubricators Corporation, having its sales executive office at 15 Broad street, New York City, its registered office in Wilmington, Delaware, and its manufacturing establishment at No. 146 Summit street, Newark, N. J., as and for its separate answer to the Bill of Complaint filed in the above-entitled cause, says:

1. It admits the truth of all of the allegations contained in Paragraph 1 of the Bill of Complaint.

20 2. It admits the truth of all of the allegations contained in Paragraph 2 of the Bill of Complaint.

3. It admits the truth of all of the allegations contained in Paragraph 3 of the Bill of Complaint.

30 4. It admits that the complainant is the holder, according to its books, of 750 shares of its capital stock, and believes, but is not positive, that complainant paid therefor the sum of \$3,400.

40 5. This defendant denies that any representation was made to complainant to the effect that it was a going concern or maintained a well-organized place of business in the City of Newark, and says that no one was authorized to make on its behalf any such representation, and this defendant says that in fact at the time when complainant made his first purchase of stock, namely, in the month of June, 1925, the defendant was a going concern and then had numerous

Answer of Berry Automatic Lubricators Corp.

bona fide orders for its products, and that at that time it was having said products manufactured for it by several other concerns, pending the time when this defendant could obtain suitable quarters in which to do its own manufacturing, which was then being negotiated for, and that some orders were actually filled between the month of June and the month of September last; that in the month of August, this defendant procured small manufacturing quarters at 170 Pennington street, Newark, N. J., where it remained until the month of September, when it procured larger quarters, which it required, at its present location, No. 146 Summit street, Newark, N. J.; that continuously from the month of June, 1925, until the present time, this defendant has been in continuous operation, engaged in filling actual commercial orders. This defendant denies that it is constantly pressed for money by its various creditors, and says that on the contrary it has no overdue unpaid bills except one of about \$275, the amount of which is now in dispute and is now being adjusted; that some of the machinery and equipment was used machinery, and was purchased on the advice of Christopher H. Berry, who was and is the defendant's chief engineer and the person on whom the defendant largely relies for its technical manufacturing detail and knowledge, and that used instead of new machinery was purchased for the sake of economy to the defendant corporation, as for its purposes such used machinery was from a practical standpoint just as efficient as new, and much more expensive, machinery would have been, and this defendant denies that the machinery and equipment contained in said plant is not fit for

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Answer of Berry Automatic Lubricators Corp.

the original scope and plan of said corporation. This defendant says that it was its original plan to manufacture brass grease cups and to assemble die casting cups, which are now being made by Barnhart Bros. & Spindler of Chicago, Illinois; that the machinery and equipment now
10 in said plant is chiefly designed for the manufacture of brass grease cups; that very little machinery is needed for the assembling of the die casting cups and the machinery and equipment now in said plant is adaptable and has actually been used, for the doing of what little work in the assembling of the die casting cups is necessary.

6. This defendant denies the truth of all of the allegations contained in Paragraph 6 of the
20 Bill of Complaint, and says that it has been and still is actually operating on and turning out for the trade, orders for its brass grease cups, and is now prepared immediately to assemble and deliver to the trade, the die casting cups, material for which it now has awaiting it at the express office in Newark, and which would have been taken up and paid for had it not been for this proceeding; that so far as the resignation of this defendant's former president,
30 James P. Welsh, is concerned, this defendant says that his resignation was demanded by the Board of Directors because his services were obtained primarily as an expert on production, and that it was expected of him that he would forthwith increase production in the plant and lower its costs, and that instead of devoting himself to that accomplishment, he undertook to spread his activities over the financing, the sales and general management of the company,
40 neglecting the production end of his duties, with

Answer of Berry Automatic Lubricators Corp.

the result that no increase in production was had by reason of his connection with the company, and his resignation was demanded also because he demanded the resignation of the two vice-presidents and the treasurer of the company, basing his demand on the fact that Mr. Christopher H. Berry desired it and threatening to have this defendant declared bankrupt if these requests were not acceded to; that instead of the dismissal of James P. Welsh as president, and the election or appointing of a new president constituting an increase in the overhead, this is untrue, because it in fact effected a saving in that James P. Welsh as president was receiving a salary of \$75 per week, and Mr. Cawley, then as sales manager, was receiving \$75 per week, and since the dismissal of Mr. Welsh took place, Mr. Cawley has been fulfilling the duties of president and also of sales director, at a salary of \$50 per week, resulting in a net saving to the company of \$100 per week; that circularization of prospective subscribers for the company's stock costs the corporation a little less than 10 per cent. of the gross amount paid by stockholders for their stock.

7. This defendant denies the truth of the allegations contained in Paragraph 7 of the Bill of Complaint, most of which it has heretofore affirmatively answered. This defendant says that it has not been prevented from running its business for lack of cash, and that this defendant does not know what is meant by the allegations that its stock is "being manipulated," but that if anything reprehensible is intended thereby, this defendant denies it and hereinafter sets forth in detail the method by, and the extent to, which this defendant has been and is

Answer of Berry Automatic Lubricators Corp.

now being financed, and also the manner in which it will be financed in the future.

10 8. This defendant denies the truth of all of the allegations contained in Paragraph 8 of the Bill of Complaint, and says that the financial office of the company is in the City of New York, and this defendant says that the manner in which the plant has been and is being operated and conducted has been solely at the dictation of its aforesaid engineer, Christopher H. Berry, in co-
20 operation with the Executive Committee of this defendant company, which Executive Committee is composed of the president, Mr. Berry and Mr. Hoshor, the latter of whom owns 750,000 out of a total of 1,000,000 shares, and who undertook, with the knowledge and consent of all concerned, the active financial management of the company, subject, of course, to the orders, from time to time, of the Board of Directors and/or of its Executive Committee, and that neither the rights of stockholders or of the creditors of this corporation are being endangered in any manner whatsoever.

30 9. This defendant denies the truth of all of the allegations set forth in Paragraph 9 of the Bill of Complaint, and says that the said Christopher H. Berry was the owner of a patent or a patent application, which he had been peddling among financial circles, and which this defendant is informed and verily believes he had been endeavoring to find a financial backer for for several years; that he entered into an agreement with Mr. Hoshor, whereby a new corporation was to be formed, which is this defendant, which was to acquire from Mr. Berry an assignment of the patent or patent application, in re-
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Answer of Berry Automatic Lubricators Corp.

turn for the entire issue of the 1,000,000 shares of the capital stock of this company, of which Mr. Berry was to have, and did in fact receive (although he has not as yet received the certificates therefor) 250,000 shares, of which he was to and in fact did donate to the company 50,000 shares, and that Mr. Hoshor was to and did receive the remaining 750,000 shares; that the arrangement between Messrs. Hoshor and Berry was that Mr. Berry was to attend to the practical manufacturing activities of the corporation, and that Mr. Hoshor was to attend to the financing of the corporation; that the cash working capital of the company was to be raised by means of the sale, through the activities of Mr. Hoshor, of the 50,000 shares of its stock, donated to it as aforesaid by Mr. Berry; that through the influence of Mr. Hoshor, his investment firm, Hoshor-Montanye Company, entered into an agreement with this defendant for the sale of this defendant's 50,000 shares of stock, a copy of which contract is hereunto annexed and made a part hereof, and designated as Schedule A; that under this contract, of the 50,000 shares of the stock of this company there has been sold 30,000 shares, of which about 200 have been sold on the installment plan, the balance having been paid for in cash; that the gross sum realized to date from the sale of said 30,000 shares of stock is the sum of \$102,000.00; that of that sum there has been either paid out on behalf of the company for its factory purposes, or for stock-selling expenses under said contract, or paid into the bank account of the company at the National Newark and Essex Banking Company, a total of \$99,900.00, and that it now has a credit with the said Hoshor-Montanye

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Company or its successor, Hoshor, Presby & Co., Inc., of \$2,100; this defendant has not, owing to the shortness of time in which it must appear in this proceeding, in response to the rule to show cause therein, had an opportunity to prepare and compile an itemized list of such expenses, but this defendant is quite willing to have the books wherein said receipts and disbursements appear examined, if this Court shall deem it proper under the circumstances to do, by anyone whom this Court may designate, and that it tenders itself ready and willing to submit a true transcript of such books to this Court as soon as it is reasonably physically possible to do so; that among other items there has been paid out, either by the aforesaid firm or by this defendant, approximately \$30,000 cash for machinery and equipment; over \$4,500 cash to Barnhart Bros. & Spindler for dies; over \$4,000 cash for or on account of the expenses connected with domestic and foreign patents; approximately \$5,000 cash to the department of this defendant which is engaged in the selling or procuring of contracts for the sale of its products; from a period beginning in July and extending to date, for salaries and traveling expenses for sales manager, two salesmen all of the time and three salesmen part of the time, and four representatives who work on a commission basis, outside of New York City, and that the activities of this department have resulted in procuring about 200 orders, approximately amounting to the sum of \$5,000.00; that inasmuch as this was a new article, it was necessary to introduce it to the trade; that as is usually done in such instances, the manner in which it was sought so to introduce it was the following: That salesmen or

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representatives would approach users of grease cups and sell them a few grease cups for experimental purposes, and to follow up such experimental sales and ascertain how such purchasers were satisfied therewith, and that having found that such purchasers were satisfied with this defendant's product, as they invariably proved to be, then to approach the jobber handling grease cups in the vicinity of such trial purchasers and procure his services as the distributor of this company's product in his vicinity, thereby gaining the advantage of his well-known sales crew and its clients with the territory and thereby reduce the direct selling expenses which otherwise would be thrown upon this defendant; that this process takes time and some money and it is some little time before the fruits thereof can be translated into dollars and cents by this company; that this defendant, owing to the lack of producing capacity, has never been able to fill the orders which it had, and that such production capacity was in part caused by the incompetence of the previous production managers, and in part by the delay of Mr. Berry in forwarding to Barnhart Bros. & Spindler Co. the plans and specifications for the die casting cup and the necessary parts; that this inability to fill the orders which it did have has prevented it from obtaining other ones, and in fact it was useless to obtain new orders until those on hand had been filled, and it was to remedy this situation that Mr. Welsh was originally procured as production manager, and that his services were dispensed with as aforesaid, and the present production manager put in charge.

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Answer of Berry Automatic Lubricators Corp.

10 10. This defendant denies the truth of the allegations contained in Paragraph 10 of the Bill of Complaint, except insofar as they have heretofore been admitted, but this defendant admits that Christopher H. Berry did not receive certificates for his said shares of stock, and that neither did Mr. Hoshor, and that the reason that neither of them received certificates for their respective shares of stock was because upon the actual issuance of the certificates it would have been necessary to place thereon, or the stubs thereof, revenue stamps, which would have totaled a cost of something like \$5,000.

20 11. This defendant admits that the complainant asked for and did not obtain a financial statement of this defendant, and this defendant says that a meeting of the Board of Directors of this defendant was held on December 15th, at which Mr. Berry was represented by Mr. Grossman as his attorney, and that at that time it was agreed that Mr. Berry should select a certified public accountant to whom it was agreed that the company's books and the books of the Hoshor, Presby & Co., Inc. (successor to the Hoshor-Montanye Co.), insofar as they related to the affairs of this company, should be available; that it was agreed that the expense of said audit should be paid by the Hoshor, Presby & Co., Inc., after the audit was completed, and that it in turn would charge this corporation therefor, and that it was agreed that the charges for such audit should not be over \$175; that the complainant's solicitor wrote to Hoshor, Presby & Co., Inc., and demanded in advance a check for the sum of \$175, which he said he would hold in escrow to pay the accountant when the work was done; that this defendant says that that was

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Answer of Berry Automatic Lubricators Corp.

not in accordance with the agreement, and that the aforesaid letter was ignored, but this defendant reiterates what it has heretofore said in regard to a proper examination or audit of its books and of the books of the Hoshor, Presby & Co., Inc., under the proper supervision as heretofore suggested, or in any other form which this Court may see fit to direct, and this defendant alleges and charges that the complainant and Mr. Berry are in fact, and have been working together, and that the arrangement was in fact made by Mr. Berry, for the joint benefit of himself and the complainant; this defendant further says that before his dismissal, Mr. Welsh demanded and received permission for an audit of the books by a certified public accountant; that a man by the name of Pansegrau appeared to make the audit, and when the firm of Hoshor, Presby & Co. learned that he was not a certified public accountant, for that reason, and for that reason alone, refused to permit him to make any examination of its books; that defendant admits that Hoshor, Presby & Co., Inc., received the letter from the complainant, a copy of which is set forth at length in the complainant's affidavit, and that Hoshor, Presby & Co., Inc., replied thereto by a letter, of which a copy is also set forth in the complainant's affidavit; and also that the complainant called on Mr. Hoshor a short time before that, which was about December 10, 1925, which was the first time this defendant, or, so far as it knows, the Hoshor, Presby & Co., Inc., had any knowledge that the complainant was dissatisfied.

12. This defendant denies the truth of all of the allegations contained in Paragraph 12 of the Bill of Complaint.

Answer of Berry Automatic Lubricators Corp.

13. This defendant admits that the sum of \$200,000 has not been expended or invested in the equipment or installation of machinery in this company's Newark plant, but says that it has invested therein approximately \$30,000, as heretofore stated.

10 14. This defendant denies the truth of the allegations contained in Paragraph 14 of the Bill of Complaint.

15. This defendant denies the truth of the allegations contained in Paragraph 15 of the Bill of Complaint.

20 16. This defendant admits that its said plant is not equipped to manufacture within a reasonable time 1,000,000 grease cups, and it says that it never had any knowledge of and never made any representation of any such order or contemplated order from any one concern as 1,000,000 grease cups.

30 17. This defendant denies the truth of the allegations contained in Paragraph 17 of the Bill of Complaint, and this defendant says that the total amount now remaining unpaid for equipment and machinery now installed in said plant is less than the sum of \$1,500, and that all the installments which are due have been paid to date, and in each case on or before the maturity thereof, and that no further payments thereon will become due until the month of January, 1926.

40 18. This defendant denies the truth of the allegations contained in Paragraph 18 of the Bill of Complaint, and this defendant says that on its books John C. Hoshor is the owner of 750,000 shares of the stock of this defendant com-

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pany, and that he received it as aforesaid from the said Christopher H. Berry, who in turn received it, together with the latter's 250,000 shares in exchange for the patent rights acquired in exchange therefor by the defendant, and that, so far as this defendant is concerned, the said 750,000 shares are the sole and individual property of the said John C. Hoshor, and that this defendant is not interested therein, and that what he does with the same is no concern of this defendant, and that this defendant is informed and verily believes that none of it has been sold or offered for sale, and that the said John C. Hoshor is still the sole owner thereof, and this defendant does know that he appears as such on the books of this defendant. This defendant further says that when the patent or patent application was assigned as aforesaid there was attached to the assignment a provision to the effect that in the event of the dissolution of the company or of its adjudication as a bankrupt, the said patent or patent applications should revert to the said Christopher H. Berry, and this defendant calls attention to the fact that inasmuch as the said Christopher H. Berry, due to his position as engineer and factory manager, could, if permitted to go on, by hampering it in its operations, bring about its insolvency or bankruptcy and thereby cause the patent or patent application to revert to himself, which in turn would enable him, with others, to start a new concern, which would inevitably gain the advantage of the expenditure for missionary work incurred by this company, and this defendant charges that the said Berry, Welsh and the complainant are and have been working together to bring about this result, and

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Answer of Berry Automatic Lubricators Corp.

that the Bill of Complaint filed in this case has not been filed by the complainant in good faith for the purpose of protecting other stockholders, but for the purpose of bringing about a reversion as aforesaid of the patent rights, for the benefit of himself, Mr. Berry and Mr. Welsh, and possibly others unknown to this defendant.

10 19. This defendant admits that John C. Hoshor, by reason of his large holdings of the stock of this defendant, has the controlling voting power therein, but denies that this company is not enabled to make progress unless the said John C. Hoshor sells his stock and delivers the proceeds to the treasury of this company, and says, on the contrary, that if it is allowed to continue its operations in its own way, un-

20 hampered by those employees, and particularly by Mr. Berry and by complainant as one of its stockholders, that it will become a prosperous, going concern.

20 20. This defendant denies the truth of the allegations contained in Paragraph 20 of the Bill of Complaint, and this defendant reiterates that there are no creditors pressing this company for payment, and that there never have

30 been any threats to foreclose any chattel mortgages or to repossess machinery sold to this company under conditional sales agreements.

21. This defendant denies the truth of the allegations contained in Paragraph 21 of the Bill of Complaint, but says that the check of Charles Ross, mentioned in the Bill of Complaint, and also one or two other checks issued by this defendant corporation, were refused payment by its bank, the National Newark and

40 Essex Banking Company, for the reason that

Answer of Berry Automatic Lubricators Corp.

they were drawn against uncollected funds; that this defendant did not then know of the said bank's rule which prevented its depositors from drawing against uncollected funds, and that this defendant had before issuing such check deposited to its account and credited in said bank perfectly valid checks of considerably more than enough to cover the check so issued, but that the checks issued were presented before the deposit checks were collected, with the result that the bank returned them uncollected; that this defendant has never issued a check, payment of which was refused, except those which were issued under such misapprehension, and that all of such checks were paid on re-presentation. 10

22. This defendant hereby reiterates what it has previously said in regard to the volume of its sales, and further says that it has not as yet made any profit, but that it is not correct to say that it has suffered a loss, because it has not yet passed through the stage of getting itself organized on a quantity production basis, but that it expects and believes that it will do so in the month of January, when the assembling of the die casting business, which will be a more profitable end of this company's business, will commence; that this company's experience has been, as herein recited, the experience of practically every manufacturing concern during the first few months of its existence, and that the organization of a production plant and selling organization, and the doing of the necessary missionary work, requires time and money; that both the necessary time and money have been spent and that this defendant now believes that it is about to realize upon the benefits thereof; that the remaining shares of the treasury stock 20 30 40

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of the company are being sold, and that the proceeds thereof will be amply sufficient to furnish the company with working capital to put it on a profit-making basis, and that the method of financing this company is exactly the method which has been adopted by many concerns which have succeeded in becoming a source of profit to their stockholders.

23. This defendant denies the truth of the allegations contained in Paragraph 23 of the Bill of Complaint, and this defendant says that neither Mr. Hoshor nor his partner, Mr. Presby, have as yet made any profits from this company or its affairs, and that they have not received any money for their personal uses or profits therefrom, except Mr. Presby, who has given his entire time to this corporation as treasurer, and who has been in receipt of a salary of \$50 per week until December fifteenth, when that was discontinued and the aforesaid investment firm has, as aforesaid, received 10 per cent. commission on the gross proceeds of the sale of the stock, as its compensation for effecting such sales, and in fact the aforesaid investment firm, when this defendant did not have a dollar of cash and no assets except its rights under the patent or patent application and the treasury stock, advanced for the benefit of this company, out of its own funds, between \$7,000 and \$8,000 cash, and as a matter of fact this defendant is informed and verily believes the 10 per cent. commission does not pay the said investment firm its actual costs of supervising the sale of this defendant's stock, and that John C. Hoshor and his partner, Mr. Presby's, only hope of receiving any profits whatever out of this company or its stock lies in making it a successful enter-

Answer of Berry Automatic Lubricators Corp.

prise, in which event the complainant and all of the other stockholders of the company will benefit accordingly.

24. This defendant admits that it engaged a suite of offices at the Wiss Building, Newark, N. J., which was used as an office for Mr. Berry and Mr. Presby as treasurer, but that some time ago this defendant caused the same to be sub-let, but the sub-tenant moved out and since then this defendant has been endeavoring to procure a new sub-tenant to relieve it of the expense of such office, and this defendant denies that such office was used for the private gain of anyone, but was used solely for the benefit of this company in the manner aforesaid. 10

25. This defendant has heretofore answered the substance of the allegations contained in Paragraph 25 of the complaint, and hereby reiterates the same. 20

26. This defendant denies the truth of the allegations contained in Paragraph 26 of the Bill of Complaint, and on the contrary says that any such course of action as mentioned in said Paragraph 26 would be almost certain to result in a total loss to the stockholders of the company on whose behalf complainant ostensibly brings this proceeding. 30

27. This defendant in answer to Paragraph 27 of the Bill of Complaint says that the Board of Directors of this defendant has never been requested by the complainant or any other of its stockholders to take the action or effect the remedies sought or pretended to be sought by said Bill of Complaint, and this defendant charges the fact to be that the complainant is 40

Answer of Berry Automatic Lubricators Corp.

the only stockholder who wishes any such action taken.

Defendant charges the fact to be that either the complainant has been misled by Mr. Berry as to the facts, or that the complainant is acting in collusion with Mr. Berry for some purposes other than for the benefit of the whole body of the stockholders of this defendant.

This defendant prays that the prayers of the complainant be in their entirety denied, and that the Bill of Complaint be dismissed with its costs in this behalf sustained.

This defendant in making this answer reserves and does not waive the right to move to strike out or take such other action in respect to the said Bill of Complaint as it may by its counsel be advised is proper.

BURNETT, SORG, MURRAY & DUNCAN,
Solicitors for and of Counsel with Defendants.

Schedule A.

MEMORANDUM OF AGREEMENT made in duplicate (each executed copy to be regarded as original for all purposes), and entered into this 3rd day of June, 1925, by and between

BERRY AUTOMATIC LUBRICATORS
CORPORATION,

a corporation organized under the laws of the State of Delaware, party of the first part, hereinafter called the Company, and

HOSHOR, MONTANYE & CO.,
INCORPORATED,

Answer of Berry Automatic Lubricators Corp.

a corporation organized under the laws of the State of New York, party of the second part, hereinafter called the Fiscal Agents.

WITNESSETH :

In consideration of the sum of One (\$1.00) Dollar to each other in hand paid, receipt of which is hereby acknowledged, the parties hereto agree as follows: 10

FIRST.

The Company hereby employs the Fiscal Agents to be its Fiscal Agents, and the Fiscal Agents accept said employment for the purposes and subject to the conditions hereinafter specified.

SECOND.

The Company hereby employs the Fiscal Agents to arrange for the financing of the Company and exclusively to sell the shares of common capital stock of the said Company and to act as Fiscal Agents for said Company in the promotion thereof subject to the conditions hereinafter specified. 20

THIRD.

The Fiscal Agents hereby covenant and agree to advance certain sums of money to the Company, from time to time, as and when directed so to do by the Company in payment of the Company's obligations and expenditures for the following items, as incurred, viz.: printing, advertising, postage, salesmen's salaries, salesmen's commissions for the sale of securities, patents, employees, markets, distribution, maintenance, plant, offices, expansion, and other disbursements incidental to the promotion of the said Company. 30

Answer of Berry Automatic Lubricators Corp.

FOURTH.

10 The Company hereby employs the Fiscal Agents exclusively to sell fifty thousand (50,000) shares of the Company's common capital stock at such price as may be fixed from time to time by said Company, provided that in the event the Company decides to increase or decrease the selling price of said shares of stock, the Com-
pany will forward to the Fiscal Agents a written notice of said change in selling price at least five (5) days before said change in selling price be-
comes effective. The Fiscal Agents hereby agree to prepare a selling campaign to sell the shares of the Company's common capital stock, and to supervise and manage said campaign, subject to the restrictions and covenants herein contained.

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FIFTH.

The Company hereby agrees that it will accept cash at the price fixed by the Company as herein provided, for the sale of its shares of common capital stock, and the Company hereby further agrees to accept other securities in exchange for its shares of common capital stock, in which latter event the Company is to determine for it-
self the value of the said securities offered and the Company is to fix the price at which it will
30 accept the same.

The parties hereto hereby covenant and agree that thirty (30) days after the execution hereof and at intervals of thirty (30) days thereafter, each of the parties hereto shall make a general accounting and audit each to the other, have a balance struck, and a statement rendered to de-
termine either the indebtedness of the Company to the Fiscal Agents, or the indebtedness of the Fiscal Agents to the Company, as the case
40 may be.

Answer of Berry Automatic Lubricators Corp.

SEVENTH.

The Company hereby agrees to pay any and all necessary actual expenditures incurred by the Fiscal Agents in the sale of the Company's common capital stock, including the commissions to the salesmen thereof, and in addition the Company agrees to pay and the Fiscal Agents agree to accept in full of all demands for the services of said Fiscal Agents rendered and to be rendered in accordance with the provisions of this agreement, the sum equivalent to ten (10) per cent. of the selling price of all shares of the Company's common capital stock sold by the Company, said sum to be paid to the said Fiscal Agents as and when each sale of stock is made. 10

EIGHTH.

It is hereby understood and agreed that the Company does not assume any and all responsibility for the acts of the Fiscal Agents, their agents, servants and employees so employed by the Fiscal Agents for the Company to sell the Company's common capital stock. 20

NINTH.

It is hereby understood and agreed that this agreement shall be binding and effective upon the successors and assigns of the parties hereto. 30

IN WITNESS WHEREOF, the parties hereto by direction of their Boards of Directors, have caused these presents to be signed by their duly authorized officers under their corporate names with their corporate seals affixed, in the City of Newark, State of New Jersey, the day and year first above written.

BERRY AUTOMATIC LUBRICATORS
CORPORATION.

By: JOHN C. HOSHOR, 40
President.

Affidavit of William A. Cawley.

Attest:

EDWIN L. PRESBY,
Secretary.HOSHOR MONTANYE & CO.,
INCORPORATED.

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JOHN C. HOSHOR,
President.

Attest:

EDWIN L. PRESBY,
Secretary.

IN CHANCERY OF NEW JERSEY.

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Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,

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Defendants.

On Bill, &c.
Affidavit.STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

WILLIAM A. CAWLEY, of full age, being duly sworn according to law, on his oath deposes and says: I have read a copy of the Bill of Complaint filed in the above-entitled cause. I am by profession, and have been since 1904, a sales manager and sales department organizer for the

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Affidavit of William A. Cawley.

distribution of commercial products, and in that capacity have held the following positions, to wit: Successively, salesman, sales manager and general manager of Ironsides Pottery Co., Bordentown, New Jersey; sales representative and organizer of the special selling campaign of and for the American Sanitary Works, Trenton, N. J. (The B. O. T. Mfg. Co., of Trenton, N. J.); district sales manager of the Mitchell Motor Car Co., Racine, Wisconsin; service sales organizer, National Employment Exchange of New York City; sales director of Boyce & Veedor, Long Island City; in each one of those capacities my sales activities were devoted exclusively to the merchandising of my several employers' products, and I have never had anything whatever to do with the selling of any stock in this corporation or any other enterprise whatsoever.

Prior to July, 1925, I never knew the defendant John C. Hoshor, nor his partner, Mr. Presby, nor Mr. Berry, and I became associated with them and with the defendant Berry Automatic Lubricators Corporation through having been referred to them by a mutual friend, namely Walter G. Camp, who knew that the defendant corporation was being organized and was in the market for an organizer and director of sales for the defendant corporation's product; that the nature of the company's product, the capacity in which my services were desired, were discussed in detail and during the next ten days I investigated the defendant company and its affairs and its prospects and the nature of its product and the probable salability thereof, and my investigation convinced me that it was a legitimate concern and that its product, if properly handled, was marketable and could be made into a profit-

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Affidavit of William A. Cawley.

able enterprise. Within ten days, therefore, from the time when I first met Mr. Hoshor, I accepted the position of sales organizer and sales manager, and at once proceeded to work up a market for the defendant company's product.

- 10 From my long experience as a sales manager I know that in order to put on the market any new product the most economical and best method of procedure is first to place a few small initial orders with well known representative concerns, in their various lines of industry, and have them test them out commercially in actual use, securing as quickly as possible a wide distribution in that manner, so that when such representative concerns are satisfied that the product so used by them, they not only immediately become customers themselves for the product in large quantities, but their names can be used as references to assist in the selling of the product to other customers, and particularly to jobbers; that there are two ways of selling almost any product; first, by sales direct from the factory to the consumer, by means of the seller's own salesmen or agents, which of course is expensive because it requires immediately a large selling force, for the expense of which the seller is directly and continuously responsible. The other method is to sell through jobbers who maintain a permanent sales force and who handle in a given territory various articles, sometimes of one line and sometimes of several different lines. This method has the advantage of securing distribution over a very wide territory, and that without the financial burden of maintaining any selling force other than such as is necessary to see the jobbers, as distinguished
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Affidavit of William A. Cawley.

from the retail trade; that in order to adopt the last method, before jobbers will take on a line which is new to the trade they must be convinced that it has merit and potential salability, and in order to do that it is necessary to adopt the method which I have above outlined.

I deemed it to the best interests of the company to adopt the latter method as the means of placing the defendant company's product on the market. At the time I took charge the defendant company had a small shop on Pennington street, Newark, N. J., where it was manufacturing brass grease cups in small quantities. I employed immediately five salesmen at a salary of \$40 a week and expenses to solicit representative concerns in the metropolitan district in various lines having need for grease cups for so-called trial orders, and on a commission basis placed representatives for the same purpose in Boston, Cleveland, Detroit, Chicago and Birmingham. However, before I put on any salesmen or representatives I personally, as I always do, went to various representative houses to place orders, so that I would personally know the extent and nature of the selling resistance to be met, so that I could properly prepare our salesmen and representatives in advance to meet such resistance. My experience was that, without exception, the idea of the company's product made a distinct and immediate appeal to such an extent that they were willing to give the company's grease cups a fair trial. I personally, in two one-half days, arranged to place the company's grease cups through the medium of trial orders in seven different representative concerns. In fact, not one concern which I solicited which used grease cups refused my solicitation, and each of them placed a bona fide order for from one-half

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Affidavit of William A. Cawley.

to a dozen grease cups of various sizes, with the understanding that they were to be paid for unless they were unsatisfactory, in which event, under the guarantee under which they were to be sold, they were not to be paid for, or if paid for, the purchase price was to be returned when the grease cups were returned. Only one grease cup
10 has in fact been returned, and that one was sold before I had any connection with the company, and was returned because the order was not filled within a reasonable time.

From the very beginning we have been unable to fill the orders which we receive. Mr. Christopher H. Berry, the patentee, who is chief engineer of the company, has had full charge of the production and the mechanics incident to the manufacture of the grease cups. He is the one
20 who established the shop in Pennington street and the factory at 146 Summit street, and is the one who selected the machinery and equipment required for the company's operations.

I have constantly been urging Mr. Berry to increase production, because there was no use of me spending money to get orders and then have them cancelled because they were not filled within a proper time. My personal belief is
30 that while Mr. Berry is probably a competent inventor and has good ideas and is a good mechanic, that he is not competent to handle men or act in a factory superintending capacity. In fact, I wrote from three to five letters to at least a dozen concerns, among whom were the Bethlehem Steel Co., Safety Car & Heating Co., The General Railway Signal Co., Taylor Instrument Co. and others equally well known, making excuses for not having filled in a reasonable time
40 the orders which they had placed.

Affidavit of William A. Cawley.

I notice in the bill and affidavits that mention is made of dissention in the organization. Although I have been intimately connected and in constant communication and conferences with Messrs. Hoshor and Berry, I know of no dissention whatever except such as has arisen out of Mr. Berry's failure to obtain production with which to meet orders, and frankly there has been severe criticism of Mr. Berry in that regard. 10

It has been and is the company's purpose not only to make brass grease cups, but also to assemble die-casting cups. The die-casting business consists of procuring orders from customers for such grease cups, having them stamped out by another concern for the defendant company, shipped to the defendant company, assemble them and ship them to the customers. This requires but little machinery and little labor and is profitable, and the prospects are that a large proportion of the grease cups sold in the future will be die casted instead of being manufactured of brass. Bernhart Bros. & Spindler have last week shipped, and there are now at the express office 525 of these cups, and the latter concern is prepared and is willing to ship them just as fast as our company needs them. This first lot of goods would have been taken from the express office and assembled and shipped last week had it not been for the institution of these proceedings. The cups as shipped to our company cost 64 cents apiece. The orders which we have for them at the present time are for \$2.00 apiece. The cost of assembling them ought not to exceed three cents apiece, leaving a clean profit of \$1.33 each, outside of the selling and overhead expense. I cannot say what the capacity of the company is to assemble these grease cups, be- 20 30 40

Affidavit of William A. Cawley.

10 cause none have as yet been assembled, and that is a very difficult matter to determine in advance. Orders for these cups have been on hand from four to five months and the delay in filling them has been due to the fact that Mr. Berry did not prepare and send to Bernhart Bros. & Spindler the blue prints and specifications necessary to stamp out the cup. That matter has, however, now been met, and there is no reason whatever that these cups should not be turned out in large quantities regularly at a profit, and I thoroughly believe that they will be if the proper production manager is placed in charge of the plant.

20 I am not enough of a mechanic to say as to whether the equipment is adequate or inadequate, as alleged in the bill of complainant and affidavits. I do know, however, positively from my own personal knowledge that the company's product is a readily salable product and at a price which, on any reasonable basis of production, ought to leave a very substantial margin of profit after all expenses and overhead are paid. Further, I will say that if the company's operations are brought to a close at the present time that all the money that has been spent will be a total waste so far as all the stockholders' of the company are concerned.

30 I am quite certain that there are no unpaid bills owing by the company past due, except one of about \$270, which is in dispute, and an adjustment of which is being negotiated, and possibly a few other small bills which have been sent to the factory and received by Mr. Berry and which he may not have turned in. I do know, however, that no creditor has pressed the company for payment, and I also know that none of the installments of the unpaid purchase prices of the

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Affidavit of William A. Cawley.

equipment or machinery of the company is overdue, and that all of the installments on it have been promptly met in each instance, and that none will become again due until January.

Had there been any checks of the company returned or refused payment because of insufficient funds, I believe that I would have known about it. I do not know, in fact, of a single case where that occurred. I do know, however, that there were several checks at one time returned because they were drawn against uncollected funds, that is deposits to the company's account, or to the account of the Hoshor, Presby & Co., Inc., which were drawn against before such deposits were collected by the bank of deposit. 10

Of my personal knowledge I know that the Spindler Company never refused to stamp out the grease cups because of lack of payment in advance by the defendant corporation, and I do know that the sole reason that it did not ship the grease cups was because it had not received, as I have above mentioned, the necessary blue prints and specifications from Mr. Berry to enable it to manufacture them. 20

I was elected director in the month of November, I believe. When I first went with the company Mr. Hoshor was President. He was succeeded by Mr. James P. Welsh, whom Mr. Berry insisted upon being made President. Mr. Welsh received \$75 a week as salary, and, as I understand it, and I am sure I am correct, the idea with which Mr. Welsh was consented to as President was that as an expert on production he would overcome the company's delay in filling orders, and as having such an influence with Mr. Berry that he would spur the latter into energizing the whole production personnel. Mr. Welsh's 30 40

Affidavit of William A. Cawley.

connection with the company, however, did not have the desired results, and consequently at a meeting of the Board of Directors, attended by myself among others, Mr. Welsh's resignation was asked for, which he declined to give.

10 I notice from Mr. Welsh's affidavit that he says that during his incumbency as President there were numerous demands by merchandise creditors for payment to them of their claims against the company which were not paid. While I do not positively know, I do not think that that statement is correct, because I never heard from him nor from anyone else anything to that effect, and I am quite positive that I would have heard it had there been any such difficulty.

20 I also notice in Mr. Welsh's affidavit that he states that the only real object of Messrs. Hoshor and Presby is to promote the company from the standpoint of stock progress. I positively know that that is not true. To my personal knowledge Hoshor, Presby & Co., Inc., from the beginning have both been striving desperately to get the production out of the factory to enable the company to fill its orders and have it placed on a self-sustaining basis as quickly as possible, and that there has been conference after conference among all concerned for that purpose, and that 30 Mr. Berry on numerous occasions refused to attend those conferences.

I note the paragraph in the affidavit of Mr. Hollander to the effect that I, as the new executive, have as my sole function "circulation of literature portraying what this company is supposed to do, but which it does not and cannot do." That statement is absolutely untrue. I have not sent out, prepared or had anything 40 whatever to do with any literature relating to the

Affidavit of William A. Cawley.

selling of the stock of the company or with what the company is supposed to do, and have had nothing whatever to do with any phase of the sale of the company's stock, and know but little about it. The only literature that I have sent out has been to the trade which is in the market, or would be likely to be in the market, for grease cups, and such literature has consisted of circulars and letters explaining the merits of the grease cup, with a view to obtaining customers in line with my duty as sales manager of the company, which fact is well known to everyone who knows anything at all about the company's affairs.

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From the time when I was employed by the company and up to two weeks ago I received a salary of \$75 per week. Two weeks ago it was reduced to \$50 a week, because Mr. Berry complained that there was too much money being spent for executive salaries. When Mr. Welsh was employed he received \$75 per week, and when he left the company I took over his duties without any increase in compensation, so that his dismissal resulted in a saving of \$75 a week, instead of an overhead expense, and it was at that time that my salary was reduced to \$50 per week, so that the total result of that meeting was a saving in overhead to the company of \$100 per week. Mr. Berry has been and still is receiving weekly \$75.

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On December 10, 1925, at the company's sales office in New York, Mr. Welsh, in the presence of Mr. Heitman and myself, stated that it was a very easy matter to take legal action against the company and have a receiver appointed, if his demands were not acceded to.

W. A. CAWLEY.

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Affidavit of John C. Hoshor.

Sworn and subscribed to before me,
this 29th day of December, 1925.

ETTA C. GROSCH,
(SEAL) A Notary Public of New Jersey.

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IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

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On Bill, &c.
Affidavit.

STATE OF NEW JERSEY, { ss.
COUNTY OF ESSEX.

30 JOHN C. HOSHOR, of full age, being duly sworn according to law, on his oath deposes and says: I am the John C. Hoshor referred to in the bill of complaint and affidavits filed in the above-entitled cause. I am a member of the firm of Hoshor, Presby & Co., Inc., which on or about September 1, 1925, became the successor to Hoshor, Montanye Co.

40 In the spring of this year I was approached by Christopher H. Berry, who was the owner of a patent or patent applied for, of certain grease cups, to arrange to finance the manufacture and marketing of the article covered by the patent. Mr. Berry, I found, had been trying

Affidavit of John C. Hoshor.

at least as early as 1923 to have this article financed, so that he could manufacture and market it. I investigated it and was of the opinion that it was a marketable and profitable proposition, and I still think so. After some negotiation, we finally made an agreement whereby a company would be formed, which turned out to be the defendant corporation, on the basis of Mr. Berry assigning certain rights in and to his patent or patent applied for, to the corporation, which in payment thereof would and actually did finally issue to him the entire capital stock of the company, consisting of 1,000,000 shares of a par value of \$5.00 per share, whereupon Mr. Berry was to, and did in fact, donate 50,000 shares of such stock to the treasury of the company for the purpose of selling the same to provide working capital for the company, and to turn over 750,000 shares of the stock to me, which he did. Mr. Berry retained the remaining 200,000 shares as and for his own.

The certificates for such stock were not issued either to Mr. Berry or to myself, for our respective shares, because of the necessity of paying a revenue tax thereon if and when the certificates were actually issued.

I have never sold or attempted to sell any part of my 750,000 shares, and I still own the same intact.

In return for the 750,000 shares which I thus received from Mr. Berry, I was to attend to the financing of the company, which was to consist of my making an arrangement on behalf of my firm with the company, whereby my firm was to, and has in fact, supervised the sale on a 10 per cent. commission basis, of the company's stock, and whereby my firm was also to advance some

Affidavit of John C. Hoshor.

10 money to start the selling campaign for the company's stock, for which expenses the company was to reimburse it, and also whereby my company would to some extent advance the money necessary for the manufacturing operations of the company, pending the receipt by the corporation of the returns of the sale of its stock, so
20 that the company would in the end pay for the sale of its stock, the salesmen's commissions, the advertising and circularization and would pay my firm 10 per cent. for such supervision. Of the company's 50,000 shares there have been sold to date 30,092 shares for the total gross sum of about \$102,000, which resulted in net to the company of the sum of \$67,160, all of which said last-mentioned sum has been paid to or for the account of the defendant corporation, excepting the sum of \$2,100, which my firm now holds for the defendant company's account, and which is available to it at any time; \$52,000 of said sum has been paid direct to the Berry Automatic Lubricators Corporation, and the balance has been, as mentioned, advanced or paid out on its account.

30 As the senior member of said investment firm, I have received my proper share of the 10 per cent. supervising commission above mentioned, but aside from that 10 per cent. commission, neither my firm nor myself have received a single dollar from the sale of stock of this company or in any other form or under any other guise whatever, except my partner, Mr. Presby, has received a salary of \$50.00 per week, and the charge that the company has been operated for the private profit of my investment firm is wholly false and, as a matter of fact, the cost to my
40 firm, the expenditure of time and money consid-

Affidavit of John C. Hoshor.

ered, has been an actual loss to myself and my firm, and my only hope of profit from this enterprise lies in placing it on a sound, profit-making basis, which I believe can be and which will be done if the company is not harassed by such proceedings as this.

On a few occasions, some few checks of the defendant corporation and of my investment firm were returned and were refused payment on the banks on which they were drawn, because they were drawn against uncollected funds. There has never been a check of either the defendant company or my firm which has been returned or refused payment because of insufficient funds, and in every case all of the checks were immediately made good. 10

The creditors of the defendant company have for the most part been paid promptly and no suits have ever been threatened, but when my partner, Mr. Presby, who had charge of the payment of these items, was ill for two weeks in the latter part of November and the first week in December, there was a delay in making payments of the company's bills. All of the installments on the purchase price of the machinery and equipment for the defendant company have without exception been promptly met, and there are no arrears in the payment thereof, and the next payments thereon will not mature until next month. 20 30

There has been paid in cash for the machinery and equipment of the company about \$30,000, and the amount unpaid on the machinery and equipment is less than \$1,500, and there have been no threats of foreclosure or removal of the same under conditional sales contracts. 40

Affidavit of John C. Hoshor.

When the patent or patent rights were turned over to the company it was under the condition that if the company should be dissolved or adjudicated a bankrupt, that in such event the rights of the defendant company under the patent should cease and terminate and that the title to the patent or patent rights should revert to Christopher H. Berry. Mr. Berry was placed in charge of production, as he claimed to be competent to produce the company's product in quantities and at a small cost. Not obtaining the production that the company ought to have obtained, I, as the then President of the defendant company, protested and remonstrated with Mr. Berry and complained, I will admit bitterly, about the lack of production, and the result was that he recommended that we obtain the services of James P. Welsh, who he said he had known for years and with whom he could work in harmony, to take charge of the production of the company's operations as an expert on production. The company acceded to Mr. Berry's request in this regard and Mr. Welsh was made President in my place and placed in charge of production. Instead of attending to that end of the business, he undertook to interfere with the financing of the corporation, which I had charge of, and with the sales end of the enterprise, which Mr. Cawley had charge of, and did not pay any attention, to speak of, to the producing end of the business, for which purpose he was hired, or, at least, he did not get the results. The result was that I complained, and a meeting of the directors was held on December 10, 1925, which meeting, owing to Mr. Berry's absence, was adjourned to December 15th, at which time all concerned were present,

Affidavit of John C. Hoshor.

and Mr. Welsh's resignation was asked for and refused, and he was subsequently dismissed. It was Mr. Berry's duty, as chief engineer and superintendent of the factory, to get the men working and keep them working and turning out work, and to prepare the necessary plans and specifications to procure the material needed by the company for its operations. This he did not do, resulting in the company being unable to fill the orders which Mr. Cawley had at considerable expense to the company procured, and the filling of which was absolutely necessary, particularly as the company was just starting in and desired above all things the good will of customers as and when they were procured. Mr. Berry's laxness and incompetence in the performance of these duties has caused friction, accentuated by the fact that he would not attend meetings called to discuss the company's affairs, with a view to receiving reports in respect to coordinating effectively the various departments of the company's business. For the last three weeks Mr. Berry has been refusing co-operation in all directions whatsoever. I am intimately acquainted with the affairs of this company, having devoted a great deal of time to it, and I am convinced from the result of Mr. Cawley's efforts in procuring orders that this company can be made, and would have been made, a profitable enterprise by this time had the production end of the business been properly taken care of, and I am convinced that it will be successful if it is properly managed insofar as the production is concerned, and to that end a meeting of the Board of Directors is to be called immediately after the hearing on this matter, for the purpose of discussing the advisability of

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Affidavit of John C. Hoshor.

discharging Mr. Berry and procuring a new production manager, because of his incompetence and inattention to duty.

10 The Charles Ross referred to in the bill of complaint or affidavit, was an old crony of Mr. Berry's, and was at Mr. Berry's request made a sort of assistant to him, and on several occasions when I was at the factory to see what the trouble with the production was, I found Mr. Ross, instead of attending to his duties, conversing with the men, keeping them from doing their work, and finally, because of the outright insubordination, he was discharged.

20 It is untrue that the company has been unable to procure material with which to manufacture its product, and it has always had ample material, except for the purpose of the die casting cups, the shipment of which material was delayed because Barnhart Brothers & Spindler did not receive from Mr. Berry the necessary plans and specifications in order to enable them to manufacture. As a matter of fact, the company is still handicapped by the failure of Mr. Berry to furnish to the above-mentioned Chicago firm the necessary drawings for the latch, which is a part of the grease cup, causing thereby an extra and an otherwise unnecessary operation by the defendant company in assembling them. The Chicago firm has never refused to manufacture for the defendant company in advance of receiving payment, and in fact has already shipped the grease cup parts for some 500 cups, which are now at the express office and which will be taken from the express office by the company this week, and on which it will then immediately start to work, and while they are being assembled others will be forthcoming from Chicago.

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Affidavit of John C. Hoshor.

With regard to the Albert Foundry Company, which did, during my partner, Mr. Presby's illness, when its bill was not paid on time, call into the factory, which in turn called in to my office and stated that no more material would be delivered until the bill rendered on December 1st was paid, which was then immediately paid, and since then the company has been, and still is, buying material from that company without any delay in delivery due to lack of payment of its bills.

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Since September and until the 15th of December, 1925, which is always a very difficult time to sell stock, owing to the money required by the public for the holiday season, the sales of the company's stock have averaged from \$3,000 to \$5,000 per week, and the company is now in a better position to sell its stock than it was before, because it is now on the verge of actually showing profits. I have been in the stock brokerage business for six years, and from my experience in selling securities, I feel that this stock will have a ready sale and that ample funds will be forthcoming for the company's requirements, especially in view of the fact that beginning the month of January, it will begin to receive a profit from its die casting business. Mr. Berry is the one who selected the machinery and equipment for the company's requirements, and the company purchased what he recommended, and selected, and while I am not an expert mechanic, I believe that the company has all the machinery and equipment which is needed for the die casting cup business and to enable it to turn out the brass grease cups, and as the orders of the company for its product increases, its plant will of necessity expand, which will re-

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Affidavit of John C. Hoshor.

quire more machinery, but that, I am confident, will be taken care of by the increased sales of the company's stock, caused by its increased prospects.

10 It is quite true that to date this company has not made any money. It always takes times in which to organize a manufacturing business and considerable time necessarily elapses from the time it actually commences business until it gets on a quantity profit-making basis. That period, I am convinced, is practically over, and that beginning with the coming month I expect that it will begin to show profits.

20 The office in the Wiss Building was primarily for the use of Mr. Berry and Mr. Presby, and the rent therefor has been paid to date, and the company has had it sub-leased for a short time, and when the tenant removed it placed it in the market for sub-letting, and as soon as a tenant can be procured it will again be sub-let, and, in fact, I have just learned that it was sub-let on Wednesday of last week, but I have not yet received the lease and other papers in connection therewith. The rent at the factory is \$167.00 per month.

30 The complainant purchased his stock in three lots, the first of which he purchased by mail, and, so far as I know, was not solicited for that purchase by anyone, except through the medium of the stock selling circular which was sent out.

40 I notice that this proceeding is described by the complainant as one for the benefit of the company's stockholders in general. In that connection I wish to say that no request has ever been made of the President or the Board of Directors to take the action which the complainant is now taking, and that no complaints or state-

Affidavit of John C. Hoshor.

ments of dissatisfaction have been received from any stockholders whatever, except the complainant, although it may be that two of his friends, a Mr. C. A. Daniels and a Mr. Edw. Costello of Philadelphia may join with the complainant in this proceeding, but of that I have no knowledge. I am quite certain that no misrepresentations were made to complainant, and I certainly know that no misrepresentations were made by or with the authority or consent of the company or myself or of my investment firm. 10

With the exception of the amount due on the unpaid purchase price of the machinery and equipment, there are no unpaid outstanding bills past due, except an item of some \$270, which is in dispute and which is now being negotiated for adjustment, except possibly there may have been within the last few days, a few small bills coming to the factory of the company which had not yet reached the office, and as soon as they do reach the office, and they should be sent in immediately, they will be paid. 20

As early as November, when Mr. Welsh's demands were not acceded to, he called my attention, and to my knowledge the attention of others in the company, as to how easy it would be for someone, whom I gather he meant to be Mr. Berry, to have the company thrown into bankruptcy or placed in the hands of a receiver, and in that case Mr. Berry would get back his patent, and I gained the impression from his remarks and his general demeanor that he was trying to use that threat as a club to run the company as he pleased. Among the requests of Mr. Welsh which I refer to, was that Mr. Presby be dismissed as Secretary and Treasurer, and that he be replaced by Mr. Welsh as Secre- 30 40

Affidavit of John C. Hoshor.

tary, so that Mr. Welsh would be President and Secretary, and that Mr. Berry be made Treasurer and that Messrs. Colquitt Lane and Mr. Frederick Heitman, Vice-President of the company, be dismissed. Those threats were made not once, but several times by Mr. Welsh. These demands of Mr. Welsh had previously been made by Mr. Berry, prior to the employment of Mr. Welsh, and I am convinced that in making them Mr. Welsh and Mr. Berry were working together. On December 11th, the complainant came to my office and stated that he had gone to the factory for the purpose of looking over the plant, preparatory to purchasing new stock; that he had talked with Mr. Berry and that the latter had told him that the company was never making any money; that although the product had merit the company was being mismanaged and that entirely because the brokers from New York were trying to run the company principally as a stock selling proposition, and that the corporation immediately needed \$75,000 worth of machinery; that it had not met its payroll on several occasions; that there had been threats of foreclosure on the chattel mortgages and conditional bills of sale, and that creditors were continually pressing for payment of their bills, and that \$200,000 worth of stock had been sold, and that the proceeds were being improperly devoted to my own personal interests and accounts. At the directors' meeting on December 10th, all parties in interest were present except Mr. Berry. The meeting was adjourned until December 15th. At that time all parties, including Mr. Berry, were present, the latter represented by his attorney, Albert Grossman, who makes an affidavit in the cause. There is set

Affidavit of John C. Hoshor.

forth in the answer of the defendant corporation quite in detail, what happened at that meeting, and I will not here repeat it. Mr. Grossman suggested that if the things which Mr. Welsh had demanded and which Mr. Berry was also demanding were not done, that it would be an easy matter to have a receiver appointed. One of the complaints was that the officers of the company were drawing "fabulous salaries." In an endeavor to meet these objections, Mr. Lane's salary was discontinued entirely (Mr. Lane had not received any salary since September), Mr. Heitman's salary was reduced from \$75.00 to \$50.00, Mr. Presby's salary was reduced to \$1.00 per year, and Mr. Cawley assumed Mr. Welsh's office and Mr. Welsh was dismissed, to which dismissal Mr. Berry and his attorney objected, stating no ground for their objection, and Mr. Cawley's salary was reduced from \$75.00 to \$50.00. At that meeting Mr. Berry was elected to the executive committee and accepted that office, of which committee I am also a member. On two or three occasions Mr. Berry has refused to attend important meetings of the committee and on two occasions when on advance notice to him of a meeting of the committee, Mr. Cawley and I went to the factory, Mr. Berry was there, and on seeing us enter the factory, he deliberately got up and left the room and refused to take any part in the meeting, one of those occasions being on Friday, December 18th, and the other on Monday, December 21st. I believe that either the complainant has been deliberately misled by Mr. Berry, who sees, or thinks he can see, some advantage by having the company declared insolvent, or a receiver appointed for it, or the complainant in bringing

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Affidavit of John C. Hoshor.

this proceeding is acting in collusion with Mr. Berry, and, in any event, the action requested by the complainant will be disastrous to the stockholders as a whole.

JOHN C. HOSHOR.

10 Sworn and subscribed to before me
this 29th day of December, A. D. 1925.

ETTA C. GROSCH,
(SEAL) A Notary Public of New Jersey.

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*Stock Selling Circular.***HAVE YOU—
ANY IDLE DOLLARS?**

Additional Capital is needed to Manufacture in
Quantity a New Product of Low Cost and
Unequalled Merit the Necessity for Which
extends to Every Piece of

Machinery requiring Lubrication.

10

**MANY ORDERS NOW WAITING TO BE
FILLED**

The Eureka Vacuum Cleaner Company started business in 1909 with capital of \$1,000. Just recently the original investors in this Company divided accumulated profits of \$12,000,000.

\$100 Invested in	Has Returned	
—Bell Telephone	\$108,000.00	20
—Burroughs Adding Ma-		
chine	82,680.00	
—Welsbach Gas Mantles....	100,000.00	
—Underwood Typewriter ..	76,650.00	
—National Cash Register ..	84,000.00	
—Gillette Safety Razor.....	96,700.00	
—Eastman Kodak	112,000.00	

A man who invested \$500.00 at the beginning of Prest-O-Lite Company twelve years ago, later refused \$3,000,000 for his stock.

30

These companies had Products of Merit, for which Necessity existed, and the original investors have been amply repaid. Many other instances could be cited.

The Outlook today for the Company outlined herein is almost identical to the outlook of the above-mentioned companies at their inception.

READ CAREFULLY—BUT WITH VISION!!

40

*Stock Selling Circular.***Wherever Wheels Turn**

(Illustration)

Exterior view of Berry Automatic Grease Cup when filled.

(Illustration)

- 10 Sectional view of a Berry Automatic Grease Cup after Cup has emptied itself (cover removed). Spring has forced Plunger to the top, all the Grease having flowed through the Orifice and the Tube, down through the Pipe Shank and onto the Bearing.

Lubrication Guarantee

We Guarantee

- 20 **BERRY AUTOMATIC GREASE CUPS**
 Patents Pending. All Rights Reserved
 to be vastly superior to any article used for similar purposes on the market today.

We Guarantee that

- 30 **BERRY AUTOMATIC GREASE CUPS**
 will more than pay for themselves the first six months, by reducing grease costs and labor costs, and at the same time lubricate more uniformly and evenly in a constant regulated amount without requiring human supervision except for refilling when Indicator shows Cup to be empty.

We Further Guarantee to refund the purchase price if

BERRY AUTOMATIC GREASE CUPS
 do not fulfill all of the above statements or are unsatisfactory for any cause whatever.

Berry Automatic Lubricators Corporation,

JOHN C. HOSHOR,
 President.

Stock Selling Circular.

Orders for Berry Automatic Grease Cups have already been received from the following:

Crucible Steel of America.	New York City	
New York Central R. R.		
Co.	New York City	10
Westinghouse Lamp Co...	Bloomfield, N. J.	
Hormiguero Sugar Corporation	.....New York City	
Manufacturers Can Co....	Newark, N. J.	
Dept. of Parks & Public Property	.....Newark, N. J.	
Barbour Flax Spinning Co.	.....Newark, N. J.	
Morten Engebretsen.....	Oslo, Norway	
Public Service Elec. & Gas Co.	.....Newark, N. J.	
Mallinckrodt Chemical Works	.....Jersey City, N. J.	20
Duratex Corporation	.....Newark, N. J.	
American Felt Company..	Boston, Mass.	
Weldon Roberts Rubber Co.	.....Newark, N. J.	
Thomas C. Pole.....	New York City	
Claremont Waste Mfg. Co.	Claremont, N. H.	
The Thomas & Betts Co...	Elizabeth, N. J.	
R. B. Halsey & Co.....	Bridgeport, Conn.	
Citro Chemical Co.....	Maywood, N. J.	
Prest-O-Lite Co., Inc.....	Elkton, Md.	
H. G. Shepard & Sons....	New Haven, Conn.	30
Jones Hollow Ware Co...	Baltimore, Md.	
Verona Chemical Co.....	Newark, N. J.	
Eastern Steel Castings....	Newark, N. J.	
Titusville Iron Works Co.	Titusville, Pa.	
Maas & Waldstein Co....	Newark, N. J.	
H. McLachlan & Co., Inc..	Danbury, Conn.	
Chase Metal Works.....	Waterbury, Conn.	
Goerke Co.	Newark, N. J.	
National Brass Mfg. Co...	Rochester, N. Y.	
and many others		

Stock Selling Circular.

This offering is being made to obtain Working Capital to take care of orders now on hand.

50,000 Shares

**BERRY AUTOMATIC LUBRICATORS
CORPORATION**

Capital Stock

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BUSINESS

The Company owns the patent rights and all other rights to the Berry Automatic Lubricators, scientifically constructed Grease Cups for all kinds of engines, automobiles, locomotives and machinery. The Company is actively engaged in the manufacture and distribution of these Grease Cups.

PRODUCT

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Grease Cups are used on practically every piece of machinery where there is a bearing or where a wheel turns. It is estimated that the demand for Grease Cups exceeds 300,000,000 annually.

30

Berry Automatic Grease Cups are guaranteed to be superior in every respect to any article used for similar purposes on the market today. Engineers, Master Mechanics and Purchasing Agents who are familiar with Berry Automatic Grease Cups recognize their superiority.

Berry Automatic Grease Cups will work thoroughly and efficiently without requiring human supervision except for refilling when cup is empty.

They are dust proof. They will not leak.

They have no threads to strip or cross.

They are so constructed that the grease flows in a constant regulated amount on the bearing and not on the outside of the cup.

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Stock Selling Circular.

They save Grease and Labor Costs—and at the same time the bearings are more uniformly and better lubricated.

They eliminate the necessity for repairs caused by faulty lubrication.

Their Cost is Small (Prices \$.75 up)—One machine shut down for repairs is loss of time and more money than sufficient to pay for the installation of **Berry Automatic Grease Cups** on many machines.

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MANUFACTURE

The Corporation has entered into a contract with **Barnhart Bros. & Spindler** of Chicago, Illinois, whereby the latter will manufacture the parts necessary for the **Grease Cups**. Same will be assembled and shipped by the Corporation from Newark, New Jersey. This will obviate the necessity of tying up large capital in plants, machinery, etc., at the beginning.

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The Corporation will start production of these **Grease Cups** in quantity of approximately 1000 per day. It is expected that this rate will be increased rapidly.

DISTRIBUTION

The Company's products are now being distributed through its Representatives. Branch offices are to be established in Chicago, Boston, St. Louis, Detroit, Pittsburgh, Birmingham and other large cities. Contracts for further distribution by jobbers are being negotiated.

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It is expected that distribution in Great Britain, Canada and other foreign countries will be started shortly.

MANAGEMENT

The management of the Corporation is in hands of capable and efficient men, who thor-

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Stock Selling Circular.

oughly realize both the Necessity and the profit possibilities of this product.

10 Officers and Directors are: John C. Hoshor, President; Christopher H. Berry, Vice-President and Chief Engineer; Colquitt Lane, Vice-President; Edwin L. Presby, Secretary and Treasurer, and George Julian Houtain, General Counsel. The Executive offices of the Corporation are located at 15 Broad Street, New York City.

PURPOSE OF FINANCING

20 This offering is being made because Working Capital is needed to take care of orders for Berry Automatic Grease Cups now on hand together with additional orders that are continually being received, and to establish several branch offices that are necessary to the welfare of the business.

***CAPITALIZATION**

The capitalization of the Company at present consists of 1,000,000 shares of capital stock of par value of \$1 each.

DIVIDENDS

The management expects that during the first year they will be able to pay dividends of 20%.

30 †PRICE \$1.50 PER SHARE

*†It has been voted by the Board of Directors to increase the capitalization of this company on June 20th to 1,000,000 shares of par value of \$5 each. After that date each share of \$1 par value in this company will be exchanged for one new share of \$5 par value fully paid and non-assessable without any additional payment from shareholders.

Stock Selling Circular.

Make All Checks Payable to the Company
BERRY AUTOMATIC LUBRICATORS
CORPORATION

671 Broad Street, Newark, New Jersey

“I have used the Berry Automatic Grease Cup on our engines in this market and have found them to be satisfactory in every respect, and believe they are the only up-to-date cup on the market at this time.” 10

*Department of Parks and Public Property,
 Newark, New Jersey.*

“I have had two of the Berry Automatic Grease Lubricators for the past month and find them to be the best that I have ever used.”

*The Manufacturers Can Co., Newark,
 New Jersey.*

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“We have had two of the Berry Automatic Grease Lubricators for the past three months and find them to be the best we have ever used.

“Berry Automatic Lubricators keep our bearings well lubricated for a period of from six to eight days longer than the ordinary types.”

Eastern Steel Castings, Newark, New Jersey.

“Find a great and new invention and buy its stock,” was the advice of Alexander Bell, inventor of the telephone.

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Answer of Defendant John C. Hoshor.

ANSWER OF DEFENDANT JOHN C. HOSHOR

The defendant, John C. Hoshor, as and for his separate answer to the Bill of Complaint filed in the above-entitled cause, says:

10 1. That he admits the truth of the allegations contained in Paragraph 1 of the Bill of Complaint.

2. That he admits the truth of the allegations contained in Paragraph 2 of the Bill of Complaint.

3. That he admits the truth of the allegations contained in Paragraph 3 of the Bill of Complaint.

20 4. That he admits the truth of the allegations contained in Paragraph 4 of the Bill of Complaint.

30 5. This defendant denies that the complainant was induced to purchase his stock in the defendant corporation, on the representation that it was a going concern or maintained a well-organized place of business in the City of Newark, but says that it has been, since its inception, a going concern and has maintained a manufacturing plant. He denies that the defendant company has been constantly pressed for money by its various creditors, and says that some of the machinery was purchased second-hand, and that that was done in the interests of economy, as it cost less and performs for the company the same service as would new machinery. He denies the truth of the other allegations contained in said Paragraph 5 of the Bill of Complaint.

Answer of Defendant John C. Hoshor.

6. This defendant denies the truth of the allegations contained in Paragraph 6 of the Bill of Complaint, except the statement that James P. Welsh, as President, was forced to resign, and that a new executive was appointed, the truth of which statements this defendant admits.

7. This defendant denies the truth of the allegations contained in Paragraph 7 of the Bill of Complaint. 10

8. This defendant admits that the executive offices of the defendant corporation are located, as stated in Paragraph 8 of the Bill of Complaint, but this defendant denies the truth of all of the other allegations contained in said Paragraph 8.

9. This defendant denies the truth of the allegations contained in Paragraph 9 of the Bill of Complaint, but says that the said Christopher H. Berry was the owner of a patent or a patent application, which he had been peddling among financial circles, and which this defendant is informed and verily believes he had been endeavoring to find a financial backer for for several years; that he entered into an agreement with this defendant, whereby a new corporation was to be formed, which is the defendant corporation, which was to acquire from Mr. Berry an assignment of the patent or patent application, in return for the entire issue of the 1,000,000 shares of the capital stock of this company, of which Mr. Berry was to have, and did in fact receive (although he has not as yet received the certificates therefor), 250,000 shares, of which he was to and in fact did donate to the defendant company 50,000 shares, and that this defendant was to and did receive the remaining 30 40.

Answer of Defendant John C. Hoshor.

750,000 shares; that the arrangement between this defendant and Mr. Berry was that Mr. Berry was to attend to the practical manufacturing activities of the corporation, and that this defendant was to attend to the financing of the corporation; that the cash working capital of the defendant company was to be raised by means of the sale, through the activities of this defendant, of the 50,000 shares of its stock, donated to it as aforesaid by Mr. Berry; that through the influence of this defendant, his investment firm, Hoshor-Montanye Company (predecessor of Hoshor, Presby & Co., Inc.), entered into an agreement with this defendant company for the sale of the defendant company's 50,000 shares of stock, a copy of which contract is hereunto annexed and made a part hereof, and designated as Schedule A; that under this contract, of the 50,000 shares of the stock of the defendant company there has been sold 30,000 shares, of which about 200 have been sold on the installment plan, the balance having been paid for in cash; that the gross sum realized to date from the sale of said 30,000 shares of stock is the sum of \$102,000; that of that sum there has been either paid out on behalf of the defendant company for its legitimate purposes, or for stock-selling expenses under said contract, or paid into the bank account of the defendant company at the National Newark and Essex Banking Company, a total of \$99,900; and that it now has a credit with the said Hoshor-Montanye Company of \$2,100; this defendant has not, owing to the shortness of time in which he must appear in this proceeding, in response to the rule to show cause therein, had an opportunity to prepare and compile an itemized list of such

Answer of Defendant John C. Hoshor.

expenses, but this defendant is quite willing to have the books wherein said receipts and disbursements appear examined, if this Court shall deem it proper under the circumstances to do, by anyone whom this Court may designate, and that he tenders himself ready and willing to submit a true transcript of such books to this Court as soon as it is reasonably physically possible to do so; that among other items, there has been paid out, either by the aforesaid firm or by the defendant corporation, approximately \$30,000 cash for machinery equipment; over \$4,500 cash to Barnhart Bros. & Spindler for dies; over \$4,000 in cash for or on account of the expenses connected with domestic and foreign patents; approximately \$5,000 cash to the department of the defendant corporation which is engaged in the selling or procuring of contracts for the sale of the defendant company's products; that from a period beginning in July and extending to date, for salaries and traveling expenses for sales manager, two salesmen all of the time and three salesmen part of the time, and four representatives who work on a commission basis outside of New York City, the activities of said department of said defendant company have resulted in procuring about 200 orders, approximately amounting to the sum of \$5,000; that inasmuch as this was a new article, it was necessary to introduce it to the trade; that as is usually done in such instances, the manner in which it was sought to so introduce it was the following: that salesmen or representatives would approach users of grease cups and sell them a few grease cups for experimental purposes, and to follow up such experimental sales and ascertain how such purchasers

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Answer of Defendant John C. Hoshor.

were satisfied therewith, and that having found that such purchasers were satisfied with this defendant's product, as they invariably proved to be, then to approach the jobber handling grease cups in the vicinity of such trial purchasers and procure his services as the distributor of the defendant company's product in his vicinity, thereby gaining the advantage of his well-known sales crew and its clients with the territory and the customers and thereby reduce the direct selling expenses which otherwise would be thrown upon the defendant company; that this process takes time and some money, and it is some little time before the fruits thereof can be translated into dollars and cents by the defendant company; that the defendant company, owing to the lack of producing capacity, has never been able to fill the orders which it had, and that such production capacity was in part caused by the incompetence of the previous production managers, and in part by the delay of Mr. Berry in forwarding to Barnhart Bros. & Spindler Company the plans and specifications for the die casting cup and the necessary parts; that this inability to fill the orders which the defendant company did have has prevented it from obtaining other ones, and in fact it was useless to obtain new orders until those on hand had been filled, and it was to remedy this situation that Mr. Welsh was originally procured as production manager, and his services were dispensed with as aforesaid production manager and the present production manager put in charge when he failed to effect such remedy.

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10. This defendant admits the truth of the allegations contained in Paragraph 10 of the

Answer of Defendant John C. Hoshor.

Bill of Complaint, except that this defendant says that the turning over to him of 750,000 shares of stock by Mr. Berry was in accordance with the agreement under which this defendant and Mr. Berry undertook to and did organize the defendant company.

11. This defendant admits the truth of the allegations contained in Paragraph 11 of the Bill of Complaint. 10

12. This defendant denies the truth of the allegations contained in Paragraph 12 of the Bill of Complaint.

13. This defendant, in answer to Paragraph 13 of the Bill of Complaint, says that there has been invested in cash in the defendant company's plant approximately the sum of \$30,000. 20

14. This defendant, in answer to Paragraph 14 of the Bill of Complaint, says that the total purchase price of all of the equipment and machinery in the defendant company's plant is the sum of \$30,000, and that he believes it equipped to carry on production on a quantity basis.

15. This defendant denies the truth of the allegations contained in Paragraph 15 of the Bill of Complaint, and says that if by any chance it is true, that such representation was made without the knowledge or consent of anyone in authority of the defendant company, and certainly without the knowledge or consent of this defendant. 30

16. This defendant denies the truth of the allegations contained in Paragraph 16 of the Bill of Complaint.

17. This defendant admits that the equipment, goods and chattels in the defendant com- 40

Answer of Defendant John C. Hoshor.

pany's plant were purchased on conditional sales agreements, and that chattel mortgages were given for a part of the purchase price.

10 18. This defendant denies the truth of the allegations contained in Paragraph 18 of the Bill of Complaint, and says that Christopher H. Berry, in exchange for certain rights under his patent or patent applied for, granted to the defendant company, received from the company the entire issue of its stock of 1,000,000 shares, of which he donated 50,000 shares to the treasury of the defendant company, and pursuant to the agreement between the defendant and the said Christopher H. Berry, the latter turned over to this defendant 750,000 shares of the stock of this company, all of which this defendant still holds and which he has not sold or attempted to sell to anyone.

19. This defendant admits that he has a voting control in the corporation, but denies the other allegations contained in Paragraph 19 of the Bill of Complaint.

20. This defendant denies the truth of the allegations contained in Paragraph 20 of the Bill of Complaint.

30 21. This defendant denies the truth of the allegations contained in Paragraph 21 of the Bill of Complaint, but this defendant says that there were on several occasions checks of the defendant company returned because they had been drawn against uncollected funds, which the company's bank of deposit would not permit.

40 22. This defendant denies the truth of the allegations contained in Paragraph 22 of the Bill of Complaint, but this defendant says that

Answer of Defendant John C. Hoshor.

the production from the defendant company's plant is not what it should have been, and that that condition has been solely due to the incompetence of Christopher H. Berry, on whom the company has largely depended for its production, but that this situation is about to be completely remedied, and this defendant says that all the stock of the defendant company which has been sold has been sold for the benefit of the company, and not for the benefit of this defendant or his firm. 10

23. This defendant denies the truth of the allegations contained in Paragraph 23 of the Bill of Complaint.

24. This defendant admits that an office was at one time maintained by the defendant in the Wiss Building, Broad street, Newark, N. J., and says that such office was procured and retained primarily for the purpose of facilitating the producing end of the defendant company's business. 20

25. This defendant says that the company is not entitled to and there is no reason why this defendant's stock or the proceeds thereof should be given or turned over to the defendant company.

26. This defendant denies the truth of the allegations contained in Paragraph 26 of the Bill of Complaint, and this defendant further says that any such action as the appointment of a receiver for the corporation will almost inevitably wreck it and cause a total loss to the stockholders of all of the money they have invested therein. 30

27. This defendant, in answer to Paragraph 27 of the Bill of Complaint, says that the Board 40

Answer of Defendant John C. Hoshor.

10 of Directors of the defendant company has never been requested by the complainant or any other of its stockholders to take the action or effect the remedies sought or pretended to be sought by said Bill of Complaint, and this defendant charges the fact to be that the complainant is the only stockholder who wishes any such action taken.

This defendant charges the fact to be that either the complainant has been misled by Mr. Berry as to the facts, or that the complainant is acting in collusion with Mr. Berry for some purposes other than for the benefit of the whole body of the stockholders of this defendant.

20 This defendant prays that the relief prayed for by the complainant as against this defendant be denied, and that the bill be dismissed as to this defendant, with his costs in this behalf to be taxed against the complainant.

BURNETT, SORG, MURRAY & DUNCAN,
Solicitors for and of Counsel with Defendant
John C. Hoshor.

Schedule A.

30 MEMORANDUM OF AGREEMENT made in duplicate (each executed copy to be regarded as original for all purposes), and entered into this 3rd day of June, 1925, by and between

BERRY AUTOMATIC LUBRICATORS
CORPORATION,

a corporation organized under the laws of the State of Delaware, party of the first part, hereinafter called the Company, and

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Answer of Defendant John C. Hoshor.

HOSHOR, MONTANYE & CO.,
INCORPORATED,

a corporation organized under the laws of the State of New York, party of the second part, hereinafter called the Fiscal Agents.

WITNESSETH :

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In consideration of the sum of One (\$1.00) Dollar to each other in hand paid, receipt of which is hereby acknowledged, the parties hereto agree as follows:

FIRST.

The Company hereby employs the Fiscal Agents to be its Fiscal Agents, and the Fiscal Agents accept said employment for the purposes and subject to the conditions hereinafter specified.

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SECOND.

The Company hereby employs the Fiscal Agents to arrange for the financing of the Company and exclusively to sell the shares of common capital stock of the said Company and to act as Fiscal Agents for said Company in the promotion thereof subject to the conditions hereinafter specified.

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THIRD.

The Fiscal Agents hereby covenant and agree to advance certain sums of money to the Company, from time to time, as and when directed so to do by the Company in payment of the Company's obligations and expenditures for the following items, as incurred, viz.: printing, advertising, postage, salesmen's salaries, salesmen's commissions for the sale of securities, patents, employees, markets, distribution, maintenance,

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Answer of Defendant John C. Hoshor.

plant, offices, expansion, and other disbursements incidental to the promotion of the said Company.

FOURTH.

10 The Company hereby employs the Fiscal Agents exclusively to sell fifty thousand (50,000) shares of the Company's common capital stock at such price as may be fixed from time to time by said Company, provided that in the event the Company decides to increase or decrease the selling price of said shares of stock, the Company will forward to the Fiscal Agents a written notice of said change in selling price at least five (5) days before said change in selling price becomes effective. The Fiscal Agents hereby agree to prepare a selling campaign to sell the shares of the Company's common capital stock, and to
20 supervise and manage said campaign, subject to the restrictions and covenants herein contained.

FIFTH.

30 The Company hereby agrees that it will accept cash at the price fixed by the Company as herein provided for the sale of its shares of common capital stock, and the Company hereby further agrees to accept other securities in exchange for its shares of common capital stock, in which latter event the Company is to determine for itself the value of the said securities offered and the Company is to fix the price at which it will accept the same.

40 The parties hereto hereby covenant and agree that thirty (30) days after the execution hereof and at intervals of thirty (30) days thereafter each of the parties hereto shall make a general accounting and audit each to the other, have a balance struck, and a statement rendered to determine either the indebtedness of the Company

Answer of Defendant John C. Hoshor.

to the Fiscal Agents, or the indebtedness of the Fiscal Agents to the Company, as the case may be.

SEVENTH.

The Company hereby agrees to pay any and all necessary actual expenditures incurred by the Fiscal Agents in the sale of the Company's common capital stock, including the commissions to the salesmen thereof, and in addition the Company agrees to pay and the Fiscal Agents agree to accept in full of all demands for the services of said Fiscal Agents rendered and to be rendered in accordance with the provisions of this agreement the sum equivalent to ten (10) per cent. of the selling price of all shares of the Company's common capital stock sold by the Company, said sum to be paid to the said Fiscal Agents as and when each sale of stock is made.

EIGHTH.

It is hereby understood and agreed that the Company does not assume any and all responsibility for the acts of the Fiscal Agents, their agents, servants and employees so employed by the Fiscal Agents for the Company to sell the Company's common capital stock.

NINTH.

It is hereby understood and agreed that this agreement shall be binding and effective upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto by direction of their Boards of Directors, have caused these presents to be signed by their duly authorized officers under their corporate names with their corporate seals affixed, in the City of

Answer of Defendant John C. Hoshor.

Newark, State of New Jersey, the day and year
first above written.

BERRY AUTOMATIC LUBRICATORS
CORPORATION.

By: JOHN C. HOSHOR,
President.

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Attest:

EDWIN L. PRESBY,
Secretary.

HOSHOR MONTANYE & CO.,
INCORPORATED.

JOHN C. HOSHOR,
President.

20 Attest:

EDWIN L. PRESBY,
Secretary.

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Answering Affidavit of Mark Hamilton Berry.

ANSWERING AFFIDAVITS

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c.

Answering
Affidavit.

10

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

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MARK HAMILTON BERRY, being duly sworn according to law, on his oath deposes and says:

I am employed by the Berry Automatic Lubricators Corporation in the capacity as assistant to Christopher H. Berry, Vice-President and Chief Engineer. I have been with the company since August 17, 1925. I know of my own knowledge the character of the machinery and equipment in the premises now occupied by the corporation. With the exception of two machines all the machinery is second-hand.

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This plant as it now exists and as it has existed for some time is not equipped to manufacture and assemble the Berry automatic lubricating cup on a basis that would be self-sustaining or earn a profit for the corporation. Since my connection with this company the organization has never produced more than on an average of five or six cups a day, and under the present condi-

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Answering Affidavit of Mark Hamilton Berry.

tions, and overhead expense, this company cannot operate with safety to its creditors and stockholders on the present plan of operation and output. From its present output it cannot even earn sufficient to cover the operating expense. There are now five men, exclusive of myself, employed in the factory. The company is burdened with an overhead expense of officers who draw a salary every week. Up to recently William A. Cawley was drawing \$75 a week, and I am informed that he is now only drawing \$50 a week. F. C. Heitman, who acted as one of the Vice-Presidents, drew a salary of \$75 a week, which has been reduced to \$50 a week since December 15, 1925. There are two other Vice-Presidents whose salaries are also drawn from the funds of this corporation. There is a stenographic force whose services were certainly not required by the Berry Automatic Lubricators Corporation, because they never had enough work to keep a stenographic force engaged. There are two stenographers in the Newark office whose services are not required for the purpose of conducting its business, wherein all production has never exceeded the amount above stated.

The prices of these grease cups range from \$1.50 to \$7.50 per cup, and the average pay of the employees who are now working in the plant ran from sixty to eighty-five cents per hour. Even with the five men on hand working, and the machinery and equipment as it now exists, we are not able to produce sufficient to cover the cost of paying for the labor.

This company has had considerable difficulty in meeting its payroll. On one occasion I was obliged to advance \$75 to help make up the payroll. I was not repaid for a period of two weeks.

Answering Affidavit of Mark Hamilton Berry.

During the month of November, 1925, I was obliged to hold up the pay of the men from Friday to Saturday afternoon, at which time they were paid. The regular pay day of the plant is Friday, but on each one of these occasions the men had to wait from one-half hour to an hour after quitting time on Saturday for their salaries.

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The highest number of men ever employed in the production of this work was thirteen men, and even at that time, with that number of men, we were unable to improve the production because of the fact that the plant is not properly equipped. We were unable to get proper shipment of material because of the fact that various companies who were willing to contract with the Berry Automatic Lubricators Corporation for the delivery of material and equipment have refused to ship, as they insisted upon cash payment, or a certain percentage as a deposit, and the balance cash on delivery.

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I have known of checks not being honored at the bank for lack of funds, and there are now on hand a great many unpaid bills. The creditors for these claims are making urgent demand for payment. I know that recently checks have been issued, which checks were returned for insufficient funds. One of the checks is as small as \$2.50, for tool work, issued to the Brozna Machine Tool Company.

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Since the service of the rule to show cause in this matter upon the officers of this company, E. J. Presby has taken a number of records and files from the office of the company, and William J. Cawley has done likewise. Mr. Christopher H. Berry, the Vice-President and Chief Engineer, informed them that they were not to do so, and

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Answering Affidavit of Jerry Dominick.

Mr. Cawley became very abusive and threatened to do bodily harm.

MARK H. BERRY.

Sworn and subscribed to before me
this 29th day of December, 1925.

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JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

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Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c.
Answering
Affidavit.

30

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

JERRY DOMINICK, being duly sworn according to law, on his oath deposes and says:

I am one of the employees of the Berry Automatic Lubricators Corporation, and have had charge of the assembling, testing and buffing. I have been with this company for two months, and in all that time we have never been able to produce or assemble more than three cups a day. There are five employees in all in the shop, and
40 I am one of the five.

Answering Affidavit of Jerry Dominick.

I have had about ten years' experience in this kind of work, and general machinery assembling work, and I know that this plant is not equipped to carry out the manufacture of the Berry automatic lubricating cup; neither have we the proper equipment, jigs, tools, dies, etc., and under the present circumstances this company is operating at a loss. This factory is not even producing its overhead expense. 10

In my opinion, this company if properly equipped with the tools and machinery, should have the capacity of producing not less than five hundred grease cups a day, but as it exists now, we are not producing any more than I have already herein stated.

On Thursday, December 24th, I was paid part of my salary and received part of it in cash and a personal check from the account of William A. Cawley in the sum of \$10.00. There is still due me a day's pay, because I have only been paid up to and including December 23, 1925. 20

That during the week of November 18 to November 25, 1925, our payroll had been delayed, and we were obliged to wait until the following day for same.

JERRY DOMINICK. 30

Sworn and subscribed to before me
this 29th day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

Answering Affidavit of Ivins Errickson.

IN CHANCERY OF NEW JERSEY.

10	Between Raymond J. Baldwin, Complainant, and Berry Automatic Lubricators Corporation, a corporation, and John C. Hoshor, Defendants.	}	On Bill, &c. Answering Affidavit.
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

20 IVINS ERRICKSON, being duly sworn according to law, on his oath deposes and says:

I am an employee of the Berry Automatic Lubricators Corporation, and have been since the latter part of October, 1925. I do mill-wrighting work and general maintenance service.

30 I know from my own personal examination that all the machinery, with the exception of two machines, which are the shaper and the tool grinder, are second-hand machines, and from what I have been able to observe during the past several weeks, the company has not been operating from the standpoint of view of production. My observation discloses that most of the work being done is purely machining, and a little assembling. At no time does it appear that more than five or six grease cups are ever assembled during the course of a day. I do not know the cause of this, except that from my personal view the plant is not equipped to produce the product

40 it originally was intended to produce, and as I

Answering Affidavit of Ivins Errickson.

have been informed, the object of the company was to manufacture a Berry automatic lubricator. During my period as an employee of this company I have made for shipment not more than six boxes, and I have never shipped any more than six lubricating cups at one time. These six lubricating cups were packed in the small boxes that I made, which boxes did not exceed the size of 8x10. 10

I received a part of the salary due me for the past week on December 24, 1925, at which time I received the sum of \$35.04. A part of this was in cash and a part in a personal check of William A Cawley. The said check was for \$20.00, drawn on the National American Bank of New York City. I received the aforesaid check and cash on Thursday, December 24th, but this only included payment up and until Wednesday, the 23rd of December, 1925. In order to be paid up to date the Berry Automatic Lubricators Corporation still owes me for one day's salary. 20

IVINS ERRICKSON.

Sworn and subscribed to before me
this 29th day of December, 1925.

RALPH G. WIGGINS, 30
A Notary Public of New Jersey.

Answering Affidavit of Patrick Ross.

IN CHANCERY OF NEW JERSEY.

10	Between Raymond J. Baldwin, Complainant, and Berry Automatic Lubricators Corporation, a corporation, and John C. Hoshor, Defendants.	}	On Bill, &c. Answering Affidavit.
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

20 PATRICK ROSS, being duly sworn according to law, on his oath deposes and says:

30 I am a machinist, and have been a machinist for the past twenty-five years or more. I am thoroughly familiar with machines, equipment, toolmaking, diemaking, and understand the general operation of factory work. I have been employed with the Berry Automatic Lubricators Corporation for the past five months. I was with the company when they were located at 170 Pennington street, Newark, New Jersey, and have been with them since they are located at 146 Summit street, Newark, New Jersey. I have observed that all the machinery with the exception of two items were second-hand, and the greatest number of men ever employed by this company was thirteen.

40 It is my firm belief that this company's plant is not equipped properly to carry on the work and manufacture the article known as the Berry automatic lubricating cup. The machinery is not sufficient to properly manufacture the lubricating

Answering Affidavit of Patrick Ross.

cup, nor are there sufficient dies, tools and jigs to manufacture and assemble the cups. At the present time there are five men employed in the factory, which includes myself, and in all my experience with the company I have never known them to assemble more than five or six cups in one day. In my opinion I am satisfied that sufficient time has lapsed for the installation and equipment of the proper machinery to produce in quantity the product of this company. I do not know the cause of the failure to equip the factory, but I do know that under the present circumstances this company cannot be operated at a profit. 10

Under the present form of production it cannot even earn enough to pay its cost of maintenance. That under the present circumstances this company is not making its overhead expenses. It is being operated at a loss. That the size of the plant, with the proper equipment, machinery, tools, dies and jigs, and a reasonable supply of raw material, should produce a minimum of four or five hundred cups a day. 20

I received a part of the salary due me for the past week on December 24, 1925, but this only included payment up and until Wednesday, the twenty-third of December. In order to be paid up to date the Berry Automatic Lubricators Corporation still owes me for one day's salary. 30

That during the week of November 18 to November 25, 1925, our pay roll had been delayed, and we were obliged to wait until the following day for same.

PATRICK ROSS.

Sworn and subscribed to before me
this 29th day of December, 1925.

JENNIE MICHELSTEIN,

A Notary Public of New Jersey. 40

Answering Affidavit of George Walker.

146 Vine St., Hillside, N. J.

IN CHANCERY OF NEW JERSEY.

10	Between Raymond J. Baldwin, Complainant, and Berry Automatic Lubricators Corporation, a corporation, and John C. Hoshor, Defendants.	On Bill, &c. Answering Affidavit.
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20 STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

GEORGE WALKER, being duly sworn according to law, on his oath deposes and says:

30 I am an employee of the Berry Automatic Lubricators Corporation, and have been acting in the capacity of foreman. I am a machinist and a toolmaker, and have been in this business for the past twenty-five years. I have been employed by the Berry Automatic Lubricators Corporation for the past four months. I have observed that all the machinery, with the exception of two items, were second-hand, and that the greatest number of men ever employed by this company was thirteen.

40 It is my firm belief that this company's plant is not equipped to properly carry on the work and manufacture the article known as the Berry automatic lubricating cup. The machinery is not sufficient to properly manufacture the lubricating cup, nor are there sufficient dies, tools and jigs to assemble the cups. At the present time there

Answering Affidavit of George Walker.

are five men employed in the factory, which includes myself, and in all my experience with the company I have never known them to assemble more than five or six cups on one day. In my opinion I am satisfied that sufficient time has elapsed for the installation and equipment of the proper machinery to produce in quantity the product of this company. I know that they are operating at a loss. Under the present form of production it cannot even earn enough to pay its cost of maintenance, and it is not making its overhead expense. That the size of the plant, with the proper equipment, machinery, tools, dies and jigs, and a reasonable supply of raw material, should produce a minimum of four or five hundred cups a day. 10

I received a part of the salary due me for the past week on December 24, 1925, but this only included payment up to and including December 23, 1925. In order to be paid up to date the Berry Automatic Lubricators Corporation still owes me for one day's salary. 20

That during the week of November 18 to November 25, 1925, our pay roll had been delayed, and we were obliged to wait until the following day for same.

GEORGE WALKER. 30

Sworn and subscribed to before me
this 29th day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

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Answering Affidavit of C. Norman Wilson.

IN CHANCERY OF NEW JERSEY.

10	Between Raymond J. Baldwin, Complainant, and Berry Automatic Lubricators Corporation, a corporation, and John C. Hoshor, Defendants.	} On Bill, &c. Answering Affidavit.
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

20 C. NORMAN WILSON, being duly sworn according to law, on his oath deposes and says:

30 About two months ago I went to work for the Berry Automatic Lubricators Corporation and the first thing I noticed was that this plant was not equipped to carry out the manufacture of the Berry automatic lubricating cup. In that period of two months there had been no change in the improvements of the appliances, or equipment, to bring about a production or proper manufacture and assemble of the Berry automatic lubricating grease cup. The equipment as it now

40 exists is of such a character that one could do the work in his own home just as well, as efficiently and as quickly. One illustration of what I refer to is the matter of making orfices. I suggested, when I came, that the company ought to have dies and jigs made to handle this, but Mr. Berry informed me that they had been waiting for these dies and jigs for a month before the time I came. During the two months I was

Answering Affidavit of C. Norman Wilson.

there they never supplied the necessary equipment. I understand they worked by hand before I came there, and we were obliged to cut these out by hand, by the use of shears, which made very clumsy and inefficient orfices.

I know, from my observation, that the plant as it now exists is not capable of producing sufficient to cover its operating expense. That it is a losing proposition as it is now operating, and will continue to be a losing proposition until they put in the proper machinery, equipment, dies and jigs. From my observation the machinery is second-hand, with the exception of the shaper and the grinder. 10

At the present time there are five men employed in the factory, which includes myself.

I received a part of the salary due me for the past week on December 24, 1925, at which time I received the sum of \$28.80. A part of this was in cash, and a part in a personal check of William A. Cawley. The said check was for \$16.80. 20

At the time I received my last salary I was told by Mr. Cawley that they were not using the company's money to pay us our salary, but were using the personal funds of the said Mr. Cawley and of the Secretary, Mr. E. L. Presby.

On two other occasions I was obliged to wait a day for my salary. 30

C. NORMAN WILSON.

Sworn and subscribed to before me
this 29th day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

Answering Affidavit of Christopher H. Berry.

shares, and that I would keep two hundred thousand shares, for my agreement with the company. The stock was issued at one dollar a share and sold for one dollar and fifty cents a share. Later on the capitalization of the company was increased from one million dollars to five million dollars.

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We located a plant in Newark at 170 Pennington street, where we remained for approximately two months. Thereafter we moved to our present location at 146 Summit street, Newark, New Jersey. I was made Vice-President and Chief Engineer, and was placed in charge of the Newark office. At the time of the incorporation of the company I was assured that the plant would be properly equipped with all the proper machinery, tools, dies and jigs, in order that the product of the company might be assembled. As time went on I had great difficulty in obtaining any machinery at all, and up to this time I have never been able to obtain a plant that would be qualified to produce the product of this defendant company. As the plant now exists it is composed chiefly of second-hand machinery, with the exception of two machines, the shaper and the grinder. We have never been able to get any of the proper equipment, due to the fact that there were never sufficient funds on hand.

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It seems to me that the organizers of this company were chiefly interested in promoting a stock sale proposition, and they had engaged a suite of offices in the Wiss Building, 671 Broad street, Newark, New Jersey, where they fitted same up with furniture, and continued to issue from the said office large quantities of literature affecting the Berry Automatic Lubricators Corporation, as well as other corporations that the Hoshor-

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Answering Affidavit of Christopher H. Berry.

Presby & Company and the Hoshor-Montayne Company were interested in.

10 I have repeatedly made demand upon the Hoshor-Presby & Company for an inspection of the books of the company, but they kept putting me off from time to time. At one time they agreed to let me select an accountant, who would make an audit of the books, and they agreed to pay this accountant a sum not in excess of \$175. They agreed to deposit this money in the presence of my New York attorney, Albert M. Grossman, but they have completely failed to fulfil this promise. They also agreed at the time, and passed a resolution to give me full authority to engage such help as might be required in the Newark plant for the purpose of producing the product originally intended. Instead of doing
20 that they immediately increased the overhead by sending a new stenographer and an additional salesman over, for what purpose I do not know. They also sent another man by the name of Moore over to the Newark office, whose purpose in coming to Newark has never been fully disclosed to me, and whose duties at the Newark plant have never been defined to me.

30 The Berry Automatic Lubricators Corporation up to this time has never been able to produce any more than five or six cups on an average per day since its entire existence. This is due to the fact that they have been unable to obtain credit, and therefore have never been able to buy the proper jigs, dies, tools and equipment.

40 It seems that the parties managing the affairs and the finances of this company have never been in a position where they had sufficient funds to pay for items required, and they have never been able to get a credit rating in mercantile

Answering Affidavit of Christopher H. Berry.

agencies. The result is that we have been unable to get any credit to any extent for any equipment, dies, tools and jigs. At the present time the plant is unable to assemble cups because of the fact that some of the things required in the process of manufacture must be done by hand. In fact, under the present circumstances we can manufacture the cups in his own home as well as he can in the plant, with the equipment that is not available. 10

During my management of the plant I have been subject to visitations by numerous people who would call at the plant for the purpose of inspection as prospective purchasers of stock in this corporation, and they would inform me that they were advised that the plant had been in business for a long time, and that they were intending to buy stock on the representations that the company had been in business for a long time. Some of these prospective purchasers informed me that they had been told that the business had been running for over fifteen years. When I told them to the contrary they were greatly amazed. 20

During the past few weeks we have had unusual difficulty in connection with meeting our payroll. On two occasions the men were obliged to wait for from one-half hour to an hour and one-half on Saturday after working hours for their salary, the usual pay day being Friday. 30

That numerous checks have been returned for insufficient funds. Creditors have called upon us and threatened to start legal proceedings. One of the checks that was returned for insufficient funds was for the small sum of \$2.50, issued to the Brozyna Machine Tool Company.

Answering Affidavit of Christopher H. Berry.

10 Some time ago I had a talk with John C. Hoshor and I asked him why this company was not receiving the proper consideration from the point of view of obtaining equipment, and installing same for the purpose of operating our plant on a profitable basis. He then informed me that he and his associates were at the same time floating the Radio Pack Company, Inc., a New York corporation, and that some of the money received from the sale of the stock of the Berry Automatic Lubricators Corporation had gone into that venture. He also made the same statement to me regarding the purchase of forty thousand acres of land in Florida, which they were going to sell off in lots, and these lots were purchased in the name of the Jacksonville Homes, Inc.

20 I have seen some of the literature which John C. Hoshor and his associates have been circulating to the public in connection with the users of the Berry Automatic Lubricators Corporation product, and find that they have listed several concerns which have never yet purchased any of the lubricator cups manufactured under my patent. I have read a letter written by the Westinghouse Lamp Company, a copy of which letter is hereto attached, requesting the Berry Automatic Lubricators Corporation to remove their name from the list published as a user of the cups manufactured by this corporation. Some of the companies whose names are with those listed have been asked by us to use these cups at the request of the Berry Automatic Lubricators Corporation for experimental purposes, and for the purpose of endeavoring to promote the sales, but in view of the limited production of the company we have never been able to manu-

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Answering Affidavit of Christopher H. Berry.

facture any cups for the purpose of sale, except as sample orders, which orders were sent on memorandum, for trial purposes.

That this company is unable to meet its present maturing obligations. At various times resolutions were adopted at meetings with reference to obtaining extensions of time for payment of bills. Particularly was such a resolution passed at the meeting of the Board of Directors held a short time ago, at which time the following resolution was adopted: 10

“The committee reviewed the outstanding bills, amounting to \$2,500.00, and have arranged to take care in part or confer with the principals of these accounts for an extension, assuring them that present conditions are only temporary, and do not affect the ability of the corporation to pay.” 20

I have had over forty years' experience as an inventor and a mechanic, a machinist and a developer of mechanical interests and requirements, and I can truthfully say that under the present circumstances this plant cannot operate at a profit. Under the present circumstances it is not even earning operating expenses. At this time there are five men working, who cannot produce enough even to earn their own wages. In addition thereto there are other expenses, such as rent, light, heat, and other overhead expense. That in addition to the employees in the factory there are the following executive officers who draw salaries: 30

The President	\$300.00 a month	
Vice-Presidents	200.00 a month	
Stenographers	88.00 a month	
Morris Heitman, who up to Saturday was drawing...	300.00 a month	40

Answering Affidavit of Christopher H. Berry.

I have heard read the Bill of Complaint and affidavits hereto attached and believe same to be true.

That since this rule to show cause was entered the officers of the defendant corporation have removed a large portion of the literature from the premises of the Berry Automatic Lubricators Corporation.

CHRISTOPHER H. BERRY.

Sworn and subscribed to before me
this 29th day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

WESTINGHOUSE LAMP COMPANY.

July 21, 1925.

Berry Automatic Lubricator Co.,
15 Broad St.,
New York, N. Y.

GENTLEMEN:

Referring to yours of the 17th, regarding the $\frac{1}{8}$ -oz. Berry Grese Cups, wish to advise that we are unable to use the larger cups for trial.

We do not feel as tho you people have given us the right treatment in this particular case. These were requested on April 15th, and we did not receive a reply from you people until May 25th, at which time you stated that we would have them in the next ten days or two weeks. We wrote you again on June 8th, and June 16th, then your Mr. Berry came here and stated that he

Answering Affidavit of Fred L. Purcell.

would have something for us in a short while. On July 16th we wrote you again, and received your reply on the 17th. If it is going to take more than ten days to supply us with what we requested we would thank you to cancel our request.

We would also appreciate it if you would take our name off of your list of users of your Cups as we have not used any of your material. 10

Yours very truly,
 (Signed) A. T. CLOHOSEY,
 Purchasing Agent.

IN CHANCERY OF NEW JERSEY.

Between
 Raymond J. Baldwin,
 Complainant,
 and
 Berry Automatic Lubricators
 Corporation, a corporation,
 and John C. Hoshor,
 Defendants. } On Bill, &c.
 Answering Affidavit. 20
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

FRED L. PURCELL, being duly sworn according to law, on his oath deposes and says:

I am in the machinery and equipment business and am associated with the firm of McCull-Ellis Company, 12 Mechanic street, Newark, New Jersey, dealers in machinery and equipment, and 40

Answering Affidavit of Fred L. Purcell.

10 new and used machinery and tools for factory and shop equipment. I have personally made an inspection of the plant known as the Berry Automatic Lubricators Corporation, located at 146 Summit street, Newark, New Jersey, and have observed the various forms of machinery in said plant. I am in no way interested in the outcome of this action.

20 As a result of my inspection of the plant I find that most of the machinery is second-hand, with the exception of the shaper and the tool grinder. That all of this machinery can be duplicated, both new and second-hand, for replacement, as second-hand machinery at peak prices, for a sum not exceeding \$5,000. That at a forced sale this plant would not be worth more than \$2,500. That as a going concern, where one could go in and turn on the power, to commence business, without any other additional expenses, I would place a valuation on the machinery and equipment as it now stands of a sum not exceeding between \$7,500 and \$8,000.

30 I am prepared to say that nowhere have I been able to find in this plant anything that would indicate that a sum as large as \$30,000 had been spent for machinery, equipment, and installation of said machinery. I have no hesitancy in saying that the machinery and equipment that I find in the premises aforesaid would not justify an expenditure of anything like \$30,000, or even a sum equal to one-half of that amount.

F. L. PURCELL.

Sworn and subscribed to before me
this 29th day of December, 1925.

40 HERMAN WINARSKY,
A Notary Public of New Jersey.

Answering Affidavit of George Walker.

Garvin Screw Machine repairs, 25	
hours service of P. Ross @ \$.80...	20.00
Bardon Oliver Screw Mach. repair,	
25 hours by P. Ross @ \$.80.....	20.00

10 There were other machines in the plant that required attention from time to time, and due to the fact that they did not take up any great amount of time I did not keep any record of them, but these particular machines would give one an indication of the disadvantage in purchasing this particular second-hand machinery instead of new machinery.

GEORGE WALKER.

Sworn and subscribed to before me
this 31st day of December, 1925.

20 JENNIE MICHELSTEIN,
Notary Public of N. J.

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Answering Affidavit of Christopher H. Berry.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c.

Answering
Affidavit.

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

CHRISTOPHER H. BERRY, being duly sworn according to law, on his oath deposes and says:

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I have heard read the affidavits of William A. Cawley and John C. Hoshor, and note what William A. Cawley has to say in respect to the production of the defendant corporation. In connection therewith I wish to say that when this company was first organized, on or about May 19, 1925, I expressly outlined and explained to John C. Hoshor and those associated with him what tools, machinery, equipment and supplies would be required in order to properly manufacture, assemble and put out for use in the market the Berry automatic lubricator cup. It was then that I was assured that by associating myself with the firm of Hoshor-Montayne Company as fiscal agent of the Berry Automatic Lubricators Corporation, that ample funds would be furnished, and dies, tools, jigs, etc., necessary to manufacture and put on the market the patented article would be secured and delivered at

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Answering Affidavit of Christopher H. Berry.

10 the plant, to be located in Newark, at an early date. It was agreed, however, by the parties that in order to expedite matters, and until a proper and suitable plant was located, that the production of the Berry automatic lubricator grease cups would be obtained by farming out and hiring out to various manufacturers various parts, so that they could be assembled and distributed for use. This plan was tried out for sometime, and was found to be entirely impractical.

20 I again called upon John C. Hoshor, and called his attention to the fact that it was essential that in order to properly develop the patented article under my patent, that it would be necessary for us to have our own plant where I could personally supervise and direct the manufacture and production of my patented grease cup. In accordance with the authority given to me by John C. Hoshor, and in accordance with my suggestion, I was authorized by John C. Hoshor and his associates to endeavor to locate a plant. I accordingly was able to obtain for temporary use premises known as 170 Pennington street, Newark, New Jersey, which property was then under the control of the
30 McCool & Ellis Company, dealers in machinery and equipment. We remained there until October, 1925. As a part of my agreement with the McCool & Ellis Company, I was able to obtain from them the use of the premises known as 170 Pennington street free of rent from July 29, 1925, to September 1, 1925. Thereafter we paid them the rent of \$35.00 a month for the months of September and October, 1925, and moved to our present location at 146 Summit street, Newark, New Jersey, in the latter part of October.
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Answering Affidavit of Christopher H. Berry.

With the equipment we had at 170 Pennington street we were unable to make very much headway, and I had occasion to comment upon this situation, and called this matter to the attention of the various officers of this defendant corporation. I informed them of our difficulties, and urged them to make arrangements to fulfil their assurances to me that we would have a plant that would be able to produce my product.

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William A. Cawley, who presumably intended to promote the sales of the product of this company, had occasion to discuss matters with me, and I explained to him our difficulties. I also referred him to a letter that I had occasion to send to him and others as of the date of October 21, 1925, wherein we explained the difficulties we had to contend with, because of the lack of the proper tools, machinery, equipment and dies, and also referred again to the same difficulties in a letter addressed to William A. Cawley, November 16, 1925.

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The situation respecting the machinery and equipment was so acute that at times, in order to even produce a single cup, it was necessary that our mechanics, instead of being provided with the tools, dies, jigs and equipment, use shears to cut out the orifices, which is an essential part of the cup plunger. In order to cut down the cost of production of these cups, this small item should have been produced in large quantities by the use of dies. The fact that we were obliged to use ordinary tinsmith shears to cut this small article out by hand not only increased the cost of production of the cup, but materially affected the efficiency of the grease cup. There were other processes, such as bending and drilling parts of this cup, which were

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Answering Affidavit of Christopher H. Berry.

done by hand, all of which could have been avoided if the proper equipment was obtained.

10 Another difficulty we had to contend with in this company was the fact that while John C. Hoshor and William A. Cawley may be thoroughly conversant with the sales promotion of a given product, and of the development of financial affairs of a company, they have no technical training, and therefore are unable to comprehend various matters concerning the manufacture of this cup.

20 I have read that part of the affidavit of John C. Hoshor wherein he states that in consideration of his undertaking to finance the company that I give him 750,000 shares of stock outright, to do with as he pleased. This is the first time I have ever had any conception of the fact that the 750,000 shares which John C. Hoshor now has under his control were shares of stock which he was to apply to his own benefit and use. It was always my understanding that these 750,000 shares of stock were to be sold and the proceeds of same to be placed in the treasury of the defendant corporation. It was understood when I gave back the 50,000 shares of stock that were supposed to have been given to me, that these 30 50,000 shares were to represent additional capital that might be obtained from the sale of same, but I never knew that John C. Hoshor was to own the 750,000 shares without placing in the treasury the sum of money received from the sale of same, nor did I ever intend at any time to place myself in a position where I would be subject to the control and dominion of John C. Hoshor and his associates.

40 It is true that a contract was entered into between the association that Hoshor was to sell

Answering Affidavit of Christopher H. Berry.

the stock, but I have never been able to obtain an accounting from them, and while the cost of promotion of the sale of this stock was only to be 10 per cent., my understanding of the situation as it now exists is that the Berry Automatic Lubricators Corporation has been charged not only 10 per cent. of the amount of money received from the sale of each share of stock, but has also been burdened with all the promotion expenses incident to the sale of this stock, which was not a part of my understanding when the agreement was presented to me. It was always my understanding that whatever funds were received from the sale of stock would be immediately accounted for and turned into the treasury.

However, as I have been able to observe, the Hoshor-Montayne Company or its successors have always maintained dominion over the funds, and it was only with great difficulty that we were able to obtain our payroll and funds to purchase immediate necessities.

I have read that part of the affidavit of John C. Hoshor wherein he says that of the 50,000 shares of the company that have been sold to date, 30,092 shares have been sold for a total sum of \$102,000, which resulted in a net sum of \$67,160. That all of said sum has been paid to or for account of the defendant corporation, except the sum of \$2,100, which amount John C. Hoshor admits his company has in their hands, for the benefit of the defendant corporation. This is the first time I have ever heard of how much money was available for the benefit of the Berry Automatic Lubricators Corporation, and this is the first time I have ever heard that an alleged sum of \$52,000 has been directed to the Berry

Answering Affidavit of Christopher H. Berry.

Automatic Lubricators Corporation. I can truthfully say at this time that in all my association with this defendant company I have never been able to see anything that would in any respect represent any expenditure for the benefit of this corporation that would justify any sum so high as \$52,000. I say that as a result of my experience in the last forty years, I cannot justify or account for any such expenditure, or any sums of money approaching that figure, and I do not believe that any such sum has ever been spent for the benefit of this company or its stockholders. This company has no assets that would even approach a figure to that extent.

I have read paragraph fourteen of the answer of John C. Hoshor wherein the said defendant states that "the total purchase price of all the equipment and machinery in the defendant corporation's plant is in the sum of \$30,000, and that he believes that it is equipped to carry on production on a quantity basis." This statement is absolutely untrue. This company never owned \$30,000 worth of machinery, because I bought every piece of the machinery that is in the plant. All of the machinery, with the exception of the shaper and the grinder, is second-hand. The entire lot of machinery, new and old, did not exceed the cost of \$3,500.

The equipment of the defendant corporation does not enable the Berry Automatic Lubricators Corporation to manufacture and produce the Berry automatic lubricator cup. I have outlined what is required and what is necessary in the way of additional equipment to produce the product of this defendant corporation, but at no time have I ever received the required equipment, although same was promised many times.

Answering Affidavit of Christopher H. Berry.

The defendant corporation has been having difficulty in meeting its obligations from the early inception of the company, and even at this time there are outstanding checks which have been protested because of insufficient funds. In the forenoon of December 30, 1925, I received a telephone call from the office of Ludlow & Squier, who are hardware dealers of the City of Newark. They are a creditor for a large sum of money, and they received a check for \$215.00 in payment of past due indebtedness. This check was returned to them and protested because of insufficient funds to the credit of the defendant corporation. 10

I deny that I have ever interfered with the promotion of the sale of the product of this defendant corporation, or the financial end of same, except insofar as it appeared to be improperly done. I remonstrated with William A. Cawley over the fact that it was useless for the company to send out literature, broadcasting the product of this corporation, unless the defendant corporation was equipped to fulfil what it advertised in its literature. I admonished him that the company was not prepared to comply with the conditions set forth in its literature because of the lack of proper equipment, and that it was detrimental to the company to take sample orders which could not be fulfilled. I also followed these statements up with calls upon John C. Hoshier and E. L. Presby to relieve me of the stress and strain of being annoyed by creditors who were constantly demanding their money, and further urged them to fulfil their promise of equipping the plant, so that we could properly manufacture our product. 20 30 40

Answering Affidavit of Christopher H. Berry.

10 I deny that I ever made a statement to John C. Hoshor or E. L. Presby wherein I threatened to throw the company into bankruptcy, or place it in the hands of a receiver. I did, however, say to these gentlemen that unless they took some steps to safeguard the interests of the stockholders, and pay the creditors, that some of the creditors would ultimately throw this company into the hands of a receiver. The defendant corporation never made sufficient money to cover its overhead expense and its operating expense. On an average they never produced more than six cups per day, nor could they produce more than the average production of six cups per day, due to the conditions aforesaid.

20 I have seen a great deal of the literature that has been circulated and broadcasted throughout the numerous States. I am attaching hereto copies of the literature that has been sent out. I know of my own knowledge that in addition to these articles which were broadcasted throughout the country, numerous publications appeared in newspapers, wherein large sums of money were expended for such advertising. These are the only copies I have.

CHRISTOPHER H. BERRY.

30 Sworn and subscribed to before me
this 19th day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

Answering Affidavit of James P. Welsh.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c.

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Answering
Affidavit.STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

JAMES P. WELSH, being duly sworn according
to law, on his oath deposes and says: 20

I have heard read the answering affidavits
filed in the above-entitled cause. I have heard
read the affidavits of John C. Hoshor and Will-
iam A. Cawley, and have examined a copy of
the prospectus of the Berry Automatic Lubri-
cators Corporation, a copy of which is hereto
attached and made a part hereof and marked
"Exhibit A." This prospectus was compiled,
printed and circulated immediately after my 30
election as president of this company. I was
elected to the presidency on the 10th day of No-
vember, 1925.

About the time of my election the prospectus
was discussed with John C. Hoshor, who was
chairman of the executive committee, and who
owns 750,000 shares of stock out of a total of
1,000,000 shares of stock. I stated to John C.
Hoshor that I did not think it was advisable to
spend a lot of money in advertising matters of 40

Answering Affidavit of James P. Welsh.

10 this kind, and he assured me that they were not going into any extravagant expenditures. I have since learned that the sum of fourteen hundred dollars for printing same was spent, and has not as yet been paid. John C. Hoshor further assured me that before this prospectus would be published and circulated, that it would be submitted to me for my approval. John C. Hoshor assured me that the purpose of having this prospectus published was to send it to the stockholders, and for the purpose of increasing their subscriptions, thereby obtaining additional funds, and for no other purpose. I explained to the said John C. Hoshor that I did not want the promiscuous mailing of this prospectus, because of the fact that I have been for some years an active worker in the American Association of Engineers, which is a national organization, having held the position of delegate to the State meetings and to the national conventions. I was also a member of the aeronautical committee, as well as chairman of the membership committee. As a result thereof I have attained a position of high esteem in the association, and have regarded my standing in same of such a character that under no circumstances would I knowingly permit myself to become associated with any corporation that did not merit my consideration, and was not conducted in a strictly businesslike manner. Because of these facts I was particularly anxious to scrutinize any literature that might be sent out, bearing my name or endorsement.

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40 Immediately upon my appointment as president of this defendant corporation, I was assured that the books of the company would be written up, and that I would have a statement

Answering Affidavit of James P. Welsh.

showing the financial condition of this corporation. I never received same, and accordingly, on November 18, 1925, I caused a letter to be sent to the following officers of the Berry Automatic Lubricators Corporation:

E. L. Presby, Secretary-Treasurer, 15 Broad street, New York City.

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W. A. Cawley, 16 Broad street, New York City.

F. C. Heitman, Vice-President, 146 Summit street, Newark, N. J.

Colquit Lane, 15 Broad street, New York City.

I referred them to their promise to let me have a financial statement of the affairs of the Berry Automatic Lubricators Corporation, and urged E. L. Presby to have same for me by Friday of that week. I asked each of the other officers to give me a statement of the affairs of the company so far as it concerned their department. None of these officers have complied with my request.

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I have heard read that part of the affidavit filed by William A. Cawley, wherein he stated that he had been urging Christopher H. Berry to increase production. I say that under the circumstances, as the plant now exists, and as it existed during the time of my regime as president, it is and was impossible to increase production because of two fundamental reasons: First, there was not the necessary equipment available for that purpose, and secondly, there were no funds available to purchase the equipment. In addition thereto, the company was burdened with the expense of executive officers who were non-producers, such as the president, vice-presidents, secretary, and stenographic force.

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Answering Affidavit of James P. Welsh.

10 I have heard read what has been said about the cost of assembling the grease cups, and from my experience with the plant as it now exists the cost of assembling is out of all proportion to the price of the cup. In assembling the new die cast proposition it would be impossible to figure the exact cost until we have gotten to the point where the plant was producing, and the assembling could be conducted on a proper basis. However, at the present time, with the very few cups that are produced per day, the cost of production is far in excess of the cost of the article itself, due to the fact that the plant is not properly equipped to conduct the business of the corporation.

20 I quite agree with William A. Cawley that he is not a mechanic, and that he is not qualified to judge as to the competency of Christopher H. Berry, whose experience and reputation in the field of mechanics is absolutely unquestioned and stands beyond reproach.

30 I note that William A. Cawley states that there are only bills in the sum of \$270.00 owing by the company, which are past due. In the short time that I was acting as president there were a great many bills past due, and I had urged E. L. Presby to make arrangements to dispose of these obligations. In fact, I am myself a creditor in the sum of \$75.00 for a worthless check which I have received, and have petitioned to this Honorable Court for leave to be made an intervening complainant in this cause.

During the short time that I was president, checks came back for insufficient funds.

40 I have heard read that part of the affidavit of William A. Cawley wherein he refers to a statement made by me at a meeting held at the

Answering Affidavit of James P. Welsh.

company's office on December 10, 1925. I deny that at that time I ever made any statement relative to a receivership. However, I do say that some time prior thereto I did call attention to the fact that by virtue of the fact that certain creditors were pressing us, that if many more came on the same way there would be great danger of an application for a receivership being made. At times when there was unusual pressure brought to bear, I made statements to the same effect to John C. Hoshor, but it was not made at the meeting. At the time these statements were made there was no desire on my part to participate in any action that would have anything whatsoever to do with any proceedings relative to a receivership. 10

I have heard read that part of the affidavit of John C. Hoshor wherein he states that 30,000 shares, which total the sum of \$102,000 had been sold and disposed of, which resulted in a net sum to the company of \$99,000. That all of that sum, with the exception of \$2,000, has been paid or disbursed for the benefit of the Berry Automatic Lubricators Corporation. In all my experience as an engineer, which has been for a great many years, I have been unable to find anything that would indicate that any sum approaching the figures of \$99,000, or any reasonable part thereof, had been disposed for the benefit of the Berry Automatic Lubricators Corporation, in equipping the plant and preparing same for useful purposes in producing the product of the company. 20 30

I have heard read that part of the affidavit of John C. Hoshor wherein he states that I was engaged for the purpose of increasing the production of the company. This is the first time 40

Answering Affidavit of James P. Welsh.

10 I have ever heard that that was the purpose of my employment. I never knew that such was the object of John C. Hoshor when he engaged me. Had that ever been brought to my attention I would have definitely made known to John C. Hoshor that the conditions of the plant, so far as production was concerned, could not be improved upon unless they would immediately undertake to furnish the necessary equipment, dies, tools and jigs to bring about the production of the article under patent. I have had many talks with Christopher H. Berry relative to the production of his patented article, and I readily agree with the said Christopher H. Berry that his complaint relative to the lack of equipment was well founded. I recall an incident wherein Christopher H. Berry called upon the executive officers of this company for equipment to bring about the production, but this equipment that was sought had never been supplied. From examination of the records, and from conferences with John C. Hoshor and William A. Cawley, I learned that Christopher H. Berry made recommendations of this character before I became associated with the company.

30 I have also heard read that part of the affidavit of John C. Hoshor wherein he complains of the fact that the delay in obtaining production is due to Christopher H. Berry's indifference, and unwillingness to co-operate. In that respect I know that this statement is unfounded and untrue. Christopher H. Berry, as well as I, explained at various times technical features applying to this matter, and that so far as acquainting the executive officers of this company with the technical requirements, everything hu-

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Answering Affidavit of James P. Welsh.

manely possible had been done by Mr. Berry and myself. That due to their lack of knowledge of these technical subjects, it has been almost impossible to give them a correct conception of the situation.

I have also heard read the answer of John C. Hoshor, and particularly note paragraph nine of his answer, wherein he enumerates disbursements to the extent of \$43,500. Taking the figure of \$102,000, being the amount realized from the sale of stock, there is still a balance of \$58,500, presumably unaccounted for. However, in the same paragraph I note that they claim a total disbursement up to date amounting to \$99,000, and that the defendant corporation has to its credit with the Hoshor-Montayne Company the sum of \$2,100. This is the first time I have ever had any information at all concerning the receipt of funds, and the disposition of same. If the figures as enumerated in the answering affidavits and answer are correct, this company is hopelessly insolvent, due to the fact that they owe considerably in excess of the sum of \$2,100 on outstanding accounts for merchandise, and other charges accrued to date. The fact that the answers of John C. Hoshor sets forth that there is a credit due to the defendant corporation of \$2,100 is entirely inconsistent with the statement made at the meeting held on December 15, 1925, at which time John C. Hoshor stated that as matters then appeared the company had no funds, nor did the Hoshor-Montayne Company, or the Presby-Hoshor & Company have any funds realized from the sale of the stock. That by virtue of the fact that from December to January is a hard time to sell stock, there was not much hope for the Berry

Answering Affidavit of James P. Welsh.

Automatic Lubricators Corporation receiving any capital during that period from the sale of stock.

10 I have heard read the fourteenth paragraph of the answer, wherein the defendant says "that the total purchase price of all the equipment and machinery of the defendant company's plant is in the sum of \$30,000, and that he believes it equipped to carry on production on a quantity basis." This statement is untrue. That in my opinion the machinery, even if all new, would not have cost \$30,000, and certainly did not cost so much, when most of it is second-hand. Even with installation charges added to the valuation of the machinery as it now exists at the plant at 146 Summit street, Newark, New Jersey, it is not worth, and would not reach the cost of
20 \$30,000.

JAMES P. WELSH.

Sworn and subscribed to
before me this 30th day
of December, 1925.

DAVID NUDELMAN,
A Notary Public of New Jersey.

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*Amended Bill of Complaint.***AMENDED BILL OF COMPLAINT.**

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

Complainants, Raymond J. Baldwin, of the City of Philadelphia and Commonwealth of Pennsylvania, a stockholder of the Berry Automatic Lubricators Corporation; Samuel Portnow, of the City of Newark, County of Essex and State of New Jersey, also a stockholder of the said corporation; James P. Welsh, of the said City of Newark, and The Albert Company, a corporation of the State of New Jersey, creditors of the said corporation, for and on behalf of themselves and all the other stockholders and creditors of the said Berry Automatic Lubricators Corporation, the defendant in this suit, who shall come in and contribute to the expense of this suit, respectfully show that:

1. Complainant, Raymond J. Baldwin, is a stockholder of the said Berry Automatic Lubricators Corporation, the defendant in this suit, holding and owning 750 shares of its capital stock at the par value of \$5.00 per share, purchased in the month of July, 1925.

2. On the 22nd day of December, 1925, the complainant, Raymond J. Baldwin, filed his bill of complaint in this Court, together with affidavits and exhibits thereto annexed, wherein he alleged, among other things, that the said defendant corporation was insolvent, that its business was grossly mismanaged and that the general public of this State and elsewhere was being defrauded in the sale of the stock of the

Amended Bill of Complaint.

10 said defendant corporation; that in said bill of complaint the complainant, Raymond J. Baldwin, prayed among other things for a decree of this Court adjudging the said defendant corporation to be insolvent, and appointing a receiver for the said defendant corporation, and an injunction restraining the said defendant corporation, its officers and agents of and from exercising the corporate franchises granted to the said corporation by this State.

20 3. That by an order of this Court in this cause, dated the 29th day of December, 1925, the complainant, James P. Welsh, was admitted a party complainant in this suit. That by orders of this Court in this cause dated the 9th day of January, 1926, the complainants, Samuel Portnow and The Albert Company, a corporation, were admitted parties complainants in this suit. That on the 5th day of January, 1926, leave was granted to the complainants, Raymond J. Baldwin and James P. Welsh, to file an amended bill of complaint. That this amended bill of complaint is filed by virtue of the consent thus as aforesaid given by the Court.

30 4. That the intervening complainant, Samuel Portnow, is a stockholder of the said defendant corporation, holding and owning 20 shares of its stock of the par value of \$5.00 per share. This complainant originally purchased 20 shares of its stock of the par value of \$1.50 per share for the sum of \$30.00, but subsequently the said shares of stock were exchanged for stock of the par value of \$5.00 per share, as hereinafter set forth. This complainant was induced to purchase the aforesaid stock by representations
40 made by the defendant corporation and its stock

Amended Bill of Complaint.

selling agents, in literature issued by them, and in personal representations by its stock salesmen. That the purchase price of said stock had been increased to \$7.50 per share, and would later be increased to \$15.00 per share, in accordance with the notice sent out on December 15, 1925.

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5. That the intervening complainant, James P. Welsh, is a creditor of the said defendant corporation to the extent of \$77.60, represented by a check in the sum of \$75.00 made by the defendant corporation, drawn on the National Newark and Essex Banking Company, of Newark, New Jersey, and dated December 11, 1925. Said check was protested when presented for payment at said bank, and there is due thereon the sum of \$2.60 for protest fees, which were charged to and paid by this complainant.

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6. The intervening complainant, The Albert Company, is a creditor of the said defendant corporation to the extent of \$64.35 for merchandise sold and delivered by it to the defendant corporation during the month of December, 1925. There is also due an additional sum to this complainant for castings made by it for the defendant corporation at the latter's instance and request, but this complainant has refused to deliver the said castings to the defendant corporation by reason of the defendant's failure to pay the cost thereof.

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7. Complainants further show that the Berry Automatic Lubricators Corporation, the defendant in this suit, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having been incorporated in the month of May, 1925, for the purpose osten-

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Amended Bill of Complaint.

sibly of engaging in the business of manufacturing a patented lubricator cup under a license therefor from one Christopher H. Berry, the patentee of said device.

8. The defendant corporation was sponsored, organized and promoted by the said Christopher H. Berry and John C. Hoshor, as hereinafter more specifically set forth. Said John C. Hoshor resides in the City, County and State of New York. Said Christopher H. Berry, the inventor of the said lubricator device, resides in the City of Newark, County of Essex and State of New Jersey.

9. The certificate of incorporation of the defendant company was made, executed and filed in the State of Delaware by three nominal or "dummy" incorporators, at the instance and request of the said Christopher H. Berry and John C. Hoshor. Said "dummy" incorporators have not, and at no time have had any interest in the said defendant corporation, or any object in its organization, but organized the same for the benefit of the said Christopher H. Berry and John C. Hoshor. The said corporation has not now, and never has had, any assets or property of any kind or description in the said State of Delaware, except its corporate franchise. It maintains a statutory office and agent in said State only for the purpose of complying with the requirements of the laws of the said State, and solely for the purpose of retaining and enjoying its franchise; but the defendant corporation does not maintain and at no time has maintained any plant or branch office for the transaction of business in said State. That all of the defendant's property has at all times been and

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is now located within this State; and whatever business the defendant has conducted has been conducted within this State. The said defendant corporation was caused to be organized under the laws of the State of Delaware by the said Christopher H. Berry and John C. Hoshor for reasons of convenience, with no intent or purpose of doing any business in said State, but with the express intent and purpose of immediately coming within this State to do the acts and things hereinafter set forth. 10

10. The authorized capital stock of the defendant corporation, originally reserved in its charter, was 1,000,000 shares at \$1.00 par value per share. By an amendment subsequently made to its charter, its authorized capital stock was increased to \$5,000,000, divided into 1,000,000 shares at the par value of \$5.00 per share. 20

11. Shortly after the defendant's incorporation under the laws of Delaware, the said Christopher H. Berry and John C. Hoshor obtained for said corporation a license to do business within this State. At that time the defendant corporation was wholly without any assets, and without funds. Shortly thereafter the said Christopher H. Berry and John C. Hoshor issued 30 the defendant's entire capital stock of \$1,000,000 to the said Christopher H. Berry, in consideration of a license to manufacture his patented lubricator cup, and simultaneously therewith the said Christopher H. Berry surrendered 50,000 shares into the treasury of the defendant corporation and gave 750,000 shares to the said John C. Hoshor, for alleged services rendered and to be rendered in connection with the promotion and sale of the stock of the defendant 40

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corporation, as hereinafter set forth. It was agreed between John C. Hoshor and Christopher H. Berry that for the time being the 50,000 shares of stock thus surrendered into the treasury should be sold to the public at varying prices, to be determined by the defendant corporation from time to time, and that they, the
10 said John C. Hoshor and Christopher H. Berry, should at all times own a controlling interest of the stock in the defendant corporation.

12. The said John C. Hoshor, by virtue of the controlling stock interest in the defendant corporation owned by him, has at all times been and now is the leading spirit in the defendant corporation; and has controlled and now controls
20 its business policies and affairs; by reason of said control, John C. Hoshor has elected or caused to be elected to the Board of Directors of the defendant company men who are in fact "dummy" directors, and who act under his direction and perform his will, and have no desire or authority to exercise their own judgment in the management or conduct of the affairs of the defendant corporation, but act at all times for the benefit of the said John C. Hoshor. The
30 said John C. Hoshor by virtue of said control has sole control of the hiring and discharge of any officers and agents of the defendant corporation.

13. That at all times herein mentioned the said John C. Hoshor has been and now is the President of the Hoshor-Montayne Company (later succeeded by and now known as Hoshor-Presby & Co., Inc.). This company has at all times been engaged and is now engaged in the stock promotion business in the City, County and
40 State of New York.

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14. Shortly after the incorporation of the defendant company and pursuant to and as part of the original scheme of incorporation thereof, the said John C. Hoshor entered upon an extensive stock selling campaign among the general public of this State and elsewhere, as hereinafter set forth. That as part of said scheme John C. Hoshor, acting or assuming to act ostensibly for and on behalf of the defendant corporation, and the said Hoshor-Montayne Company, and Hoshor-Presby & Co., Inc., executed an agreement whereby the said Hoshor-Montayne Company and Hoshor-Presby & Co., Inc., was appointed the stock selling agent of the defendant corporation, to sell said 50,000 shares of stock upon a selling commission of 10 per cent. Said agreement was signed by said John C. Hoshor as President for both of said companies.

15. Complainants further show that in furtherance of the said stock selling campaign, John C. Hoshor composed, printed and distributed broadcast alluring prospectuses and stock selling campaign literature, relating to the defendant company and the Berry lubricator cup; and also published announcements relating to the sale of stock in said defendant company in various newspapers. That one of said announcements, comprising an entire page, appeared in the Newark Evening News and another in the Newark Star-Eagle, newspapers published in the City of Newark, and having large circulations within the State, a copy of which advertisement is hereto attached and made a part hereof, and marked "Exhibit D." That said John C. Hoshor also published and distributed through the United States mails large quantities of literature of the

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10 same purport, true copies whereof are annexed hereto and made a part hereof, and marked Exhibits A, B and C. That by reason of said announcements and propaganda said John C. Hoshor encouraged and solicited the purchase of the defendant company's stock by the general public. That the said literature and propaganda was followed up by personal interviews among the general public by stock salesmen or canvassers employed by the said John C. Hoshor and the Hoshor-Montayne Company and Hoshor-Presby & Co., Inc. That the said literature and stock sales men represented to the general public, among other things, the following:

- 20 (a) That the defendant corporation was the owner of the patent rights to the said lubricator cup.
- (b) That the defendant corporation was a going concern, and manufactured large quantities of said device which it was marketing and selling.
- (c) That the defendant corporation had a fully equipped plant wherein upwards of \$30,000 had been invested in machinery.
- 30 (d) That the defendant corporation was the owner of patent rights in said device in various foreign countries.
- (e) That the defendant's business was operating at a profit, and that a 20% dividend was expected to be declared by the end of the year 1926, and that the defendant corporation had been offered \$23.00 per share for a controlling interest of its stock by the General Motors Corporation.

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- (f) That the defendant company had on hand large orders from some of the leading manufacturing concerns in the country.
- (g) That the proceeds arising out of the sale of stock was to be used for working capital to manufacture the defendant's product in large quantities. 10

16. Complainants further show that by means of the literature and propaganda thus as aforesaid distributed among the general public, and by means of the personal solicitation of the said stock salesmen under the direction of the said John C. Hoshor, and the Hoshor-Montayne Company and Hoshor-Presby & Co., Inc., there was sold 30,000 shares of the defendant's capital stock at varying prices, ranging from \$1.50 to \$7.50 per share, from the sale whereof there was realized the sum of about \$102,000; that of this amount \$99,900 has been expended by the said Hoshor-Montayne Company and the said Hoshor-Presby & Co., Inc., for organization expense and stock selling commission, and that of said sum only about \$3,500 has been invested in machinery and equipment of the defendant corporation. That upon the amendment of the defendant's certificate of incorporation the holders of the \$1.00 par value stock received in exchange therefor stock of the par value of \$5.00 per share without paying anything additional therefor. 20 30

17. That shortly after the commencement of the stock selling campaign the said Christopher H. Berry, under the instructions and guidance of the said John C. Hoshor, rented a small plant from the McCool-Ellis Company at 170 Pennington street, Newark, New Jersey, purchased a 40

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small amount of machinery and equipment, and fitted up the said plant. Said machinery and equipment was and is entirely inadequate for the purpose of manufacturing the proposed product of the corporation. In October, 1925, the said plant was moved to its present location at 146 Summit street, Newark, New Jersey.

10 18. Complainants further show that the said representations were and are false and were made by the said Hoshor-Montayne Company and Hoshor-Presby & Co., Inc., with the knowledge of the said John C. Hoshor, for the purpose of inducing the complainants and the other stockholders of the defendant corporation to purchase said stock. Complainants further show that in truth and in fact, the said defendant corporation has not and at no time has had assets exceeding 20 the value of \$5,000, consisting of its plant and equipment; that a substantial part of said equipment is encumbered by chattel mortgages and conditional bills of sale on which there is due approximately \$2,500, the greater part of which is now past due; with the exception of two or three pieces of machinery, defendant's machinery and equipment is second hand and is of little intrinsic value, and is not adequate, fit or suitable 30 for the manufacture of the Berry lubricator; that at no time has the General Motors Company or any other firm, person or corporation offered to purchase a controlling interest or any other interest in the stock of the defendant corporation at \$23.00 a share; that at no time has the defendant corporation earned any profits; that it has at no time derived sufficient earnings to pay its fixed charges and operating expenses; that on the contrary, the business of the defendant 40 corporation has been and is being conducted at

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a great loss, detrimental to the interests of its stockholders, and that its business cannot be conducted with safety to the public and advantage to its stockholders.

19. Complainants further show that in truth and in fact, the defendant corporation is insolvent within the meaning of the statutes of this State in such case made and provided. That the tangible assets of the defendant corporation, consisting of its plant, machinery and equipment, is not worth more than between \$3,000 and \$4,000; that its plant as a going concern is not worth more than \$5,000, which cost includes the cost of installation and incidental expenses; that the liabilities of the defendant corporation are approximately \$5,000, and that the greater portion thereof is long past due and payable, and remains unpaid by reason of the fact that the defendant corporation has not sufficient cash or available credit to meet said indebtedness; that for several months last past numerous checks issued by the defendant corporation have been dishonored and protested for non-payment; that creditors of the defendant corporation are pressing it for payment of the moneys due them; that within a month last past the defendant corporation, not having any funds to meet its indebtedness, distributed among its creditors a large number of checks made by the Hoshor-Montayne Company and Hoshor-Presby & Co., Inc.; but even these checks have been dishonored and protested for insufficient funds.

20. That in addition to the claims against the defendant corporation held by the complainants, James P. Welsh and The Albert Company, dishonored and protested checks of the defendant

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corporation are held by the following of its creditors, to wit:

Reliable Machine Screw Company,
Brozyna Machine Tool Company.

That the following creditors of the defendant corporation, to wit:

10 Barbour, Love & Woodward, Inc.,
 Ludlow & Squier,
 Jaehling, Inc.,

hold dishonored and protested checks of the Hoshor-Presby & Co., Inc., which were given in payment of claims of the defendant corporation. Several of said checks have been deposited several times at the request of the defendant corporation, but each time have been returned for insufficient funds.

20 21. Complainants further show that they have been informed and advised that the defendant corporation has been paying some of its creditors in preference over other creditors of the same class, and that such payments are in violation of Section 64 of our Corporation Act (revision of 1896).

30 22. Complainants further show that on December 18, 1925, the directors of the defendant corporation voted to ask its creditors for an extension of time to meet their claims, and the following is an excerpt from the minutes of the Board of Directors' meeting held on that day:

40 "The committee reviewed the outstanding bills, amounting to \$2,500, and have arranged to take care in part or confer with the principals of these accounts for an extension, assuring them that present conditions are only temporary and do not affect the ability of the corporation to pay."

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23. Complainants further show that the defendant corporation has been and is being operated at a loss and that its volume of business is almost negligible and is wholly insufficient to earn its fixed charges and operating expenses.

24. That the defendant corporation has no working capital; that it has at no time conducted and operated its business from moneys earned in operation, but that its business has been and is being conducted by and with the moneys realized from sale of stock, from which funds the said John C. Hoshor has been drawing a salary of between \$50 to \$75 a week, besides commissions on the sale of stock; that the stock selling campaign still continues unabated and that there is being sold between \$3,000 and \$5,000 of stock among the general public a week in this State and elsewhere; that the business of the defendant corporation is unprofitable and is ostensibly being conducted by said John C. Hoshor in order to foster and aid the sale of stock, which is being conducted by misleading prospectuses, literature and propaganda and by false and fraudulent representations being made by stock salesmen employed by the said Hoshor-Presby & Co., Inc.

25. That the proceeds realized from the sale of the stock is not being paid into the treasury of the defendant corporation, but is being appropriated by the said John C. Hoshor and the Hoshor, Presby & Co., Inc., for payment of the expense of printing of said advertising literature, stock salesmen's commissions and the salary of the said John C. Hoshor; that already the defendant corporation has sustained a deficit of more than \$100,000 in seven months' operations, and that the deficit is continually growing larger, with the increase in sale of stock.

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26. Complainants further show that the general public of this State has been grossly defrauded through the stock manipulations aforesaid, and that the intervention of this Court is necessary to prevent the continuance of said stock fraud being perpetrated upon the public of this State, and that the sale to the public of this State of the stock of the defendant corporation should be enjoined and that the defendant corporation and its officers and agents should be enjoined and restrained from further carrying on the business of the defendant corporation and from exercising any of the franchises granted to the said defendant corporation by this State.

27. That the assets of the defendant company are subject to judgments, executions and suits that have been or may be brought against the defendant company by its creditors and stockholders who have been defrauded in the manner hereinbefore set forth; that unless the assets of the said defendant company are properly marshalled by a receiver or receivers to be appointed for the said company, said company will be subject to vexatious and costly litigation and that in the event of forced sale its property will bring very much less than its fair and reasonable value, all of which will be of great detriment to the complainants and the other stockholders and creditors of the defendant corporation; and that complainants believe that unless this Court, in view of the facts aforesaid, will deal with its property as a single trust fund, its property will be dissipated to such an extent that its stockholders will realize little or nothing from its holdings, and in all probabilities the creditors of the defendant corporation, and

Amended Bill of Complaint.

particularly defendant's creditors residing in this State, will be unable to collect their claims or any substantial part thereof against the defendant company and that the intervention of this Court is necessary for the protection of the said stockholders and creditors.

28. Complainants further show that since the institution of this suit the said John C. Hoshor has removed or has caused to be removed from within the principal office of the defendant corporation in this State the corporate books, and books of account of the defendant corporation, together with all records, files and correspondence, with a quantity of finished and unfinished product on hand, and complainants say that they have been informed and believe, and therefore charge the fact to be, that it is the purpose and intent of the said John C. Hoshor to fraudulently remove the assets and property of the defendant corporation located within this State beyond its borders; and complainants allege that the intervention of this Court by injunction is necessary to prevent the said John C. Hoshor from accomplishing said purpose.

Complainants are without adequate remedy at law, and therefore pray:

1. That the defendant, Berry Automatic Lubricators Corporation, may answer this amended bill of complaint without oath and each statement therein made.

2. That the said defendant company may be decreed to be insolvent and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its stockholders and creditors, and that same can-

Amended Bill of Complaint.

not be conducted with safety to the public and advantage to the stockholders.

3. That a receiver be appointed for said defendant corporation, according to the statutes of this State in such case made and provided.

10 4. That an injunction issue from this Honorable Court, restraining the said defendant corporation and its officers and servants and agents from exercising any of its rights, privileges or franchises, granted by the State of New Jersey to said corporation, and from paying out, selling, assigning or transferring any of its assets, moneys, funds, lands and tenements or effects except to a receiver appointed by this Court until the Court shall otherwise order.

20 5. That the assets of the said defendant corporation, and the rights of complainant and the other creditors and stockholders, be ascertained.

30 6. That the Court fully administer the funds being the entire assets of the defendant corporation, and for that purpose marshal and ascertain all of its assets, liens and priorities, if any, existing on all parts thereof, and enforce the lawful liens and rights of all the creditors and stockholders of the said defendant corporation as they may be finally ascertained.

7. That a writ of subpoena may issue, commanding the said defendant to answer the bill of complaint, and to abide by such decree as this Court may make in the premises.

40 8. That complainants' bill of complaint, filed herein, and all the affidavits annexed thereto, and all the exhibits therein referred to, be made and considered part of this bill of complaint,

Agreement.

as if the same were herein fully set forth at length.

9. That the complainants may have such other and further relief as the nature of the case may require.

S. M. HOLLANDER,
Solicitor for and of Counsel with Complainant,
Raymond J. Baldwin. 10

ISRAEL B. GREENE,
Solicitor for and of Counsel with Complainants,
The Albert Company and Samuel Portnow.

LOUIS K. PRESS,
Solicitor for and of Counsel with Complainant,
James P. Welsh.

ISRAEL B. GREENE,
Of Counsel with Complainants. 20

MEMORANDUM OF AGREEMENT made in duplicate (each executed copy to be regarded as original for all purposes), and entered into this 3rd day of June, 1925, by and between

BERRY AUTOMATIC LUBRICATORS
CORPORATION, 30

a corporation organized under the laws of the State of Delaware, party of the first part, hereinafter called the Company, and

HOSHOR-MONTAYNE & CO.,
INCORPORATED,

a corporation organized under the laws of the State of New York, party of the second part, hereinafter called the Fiscal Agents, 40

Agreement.

WITNESSETH:

In consideration of the sum of one (\$1.00) dollar to each other in hand paid, receipt of which is hereby acknowledged, the parties hereto agree as follows:

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FIRST.

The company hereby employs the fiscal agents to be its fiscal agents, and the fiscal agents accept said employment for the purposes and subject to the conditions hereinafter specified.

SECOND.

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The company hereby employs the fiscal agents to arrange for the financing of the company and exclusively to sell the shares of common capital stock of the said company and to act as fiscal agents for said company in the promotion thereof, subject to the conditions hereinafter specified.

THIRD.

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The fiscal agents hereby covenant and agree to advance certain sums of money to the company, from time to time, as and when directed so to do by the company, in payment of the company's obligations and expenditures for the following items, as incurred, viz: printing, advertising, postage, salesmen's salaries, salesmen's commissions for the sale of securities, patents, employee, markets, distribution, maintenance, plant, offices, expansion, and other disbursements incidental to the promotion of the said company.

FOURTH.

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The company hereby employs the fiscal agents exclusively to sell fifty thousand (50,000) shares of the company's common capital stock at such

Agreement.

price as may be fixed from time to time by said company, provided that in the event the company decides to increase or decrease the selling price of said shares of stock the company will forward to the fiscal agents a written notice of said change in selling price at least five (5) days before said change in selling price becomes effective. The fiscal agents hereby agree to prepare a selling campaign to sell the shares of the company's common capital stock, and to supervise and manage said campaign, subject to the restrictions and covenants herein contained.

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FIFTH.

The company hereby agrees that it will accept cash at the price fixed by the company as herein provided, for the sale of its shares of common capital stock, and the company hereby further agrees to accept other securities in exchange for its shares of common capital stock, in which latter event the company is to determine for itself the value of the said securities offered and the company is to fix the price at which it will accept the same.

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The parties hereto hereby covenant and agree that thirty (30) days after the execution hereof and at intervals of thirty (30) days thereafter, each of the parties hereto shall make a general accounting and audit each to the other, have a balance struck, and a statement rendered to determine either the indebtedness of the company to the fiscal agents, or the indebtedness of the fiscal agents to the company, as the case may be.

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SEVENTH.

The company hereby agrees to pay any and all necessary actual expenditures incurred by the fiscal agents in the sale of the company's

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Agreement.

10 common capital stock, including the commissions to the salesmen thereof, and in addition the company agrees to pay and the fiscal agents agree to accept in full of all demands for the services of said fiscal agents rendered and to be rendered in accordance with the provisions of this agreement, the sum equivalent to ten (10) per cent. of the selling price of all shares of the company's common capital stock sold by the company, said sum to be paid to the said fiscal agents as and when each sale of stock is made.

EIGHTH.

20 It is hereby understood and agreed that the company does not assume any and all responsibility for the acts of the fiscal agents, their agents, servants and employees so employed by the fiscal agents for the company to sell the company's common capital stock.

NINTH.

It is hereby understood and agreed that this agreement shall be binding and effective upon the successors and assigns of the parties hereto.

30 IN WITNESS WHEREOF, the parties hereto by direction of their Boards of Directors, have caused these presents to be signed by their duly authorized officers under their corporate names with their corporate seals affixed, in the City of Newark, State of New Jersey, the day and year first above written.

BERRY AUTOMATIC LUBRICATORS
CORP.,

By JOHN C. HOSHOR, President.

Attest:

40 Edwin L. Presby,
Secretary.

Affidavit of Christine Baldwin.

HOSHOR MONTAYNE & CO., Incorporated,

By JOHN C. HOSHOR, President.

Attest:

Edwin L. Presby,
Secretary.

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IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin, *et al.*,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
Defendants.

On Bill, &c.

Affidavit.

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

CHRISTINE BALDWIN, being duly sworn according to law, on her oath deposes and says:

I am the wife of Raymond J. Baldwin, who is the complainant in the above-entitled cause. I recall distinctly the first time my husband bought stock in this defendant corporation. It was the result of some literature we received in the mail setting forth in great detail the value of the stock, the names of users of the product of the defendant company, and other details which made us believe that we were buying stock in a reputable and going concern. Shortly thereafter we were approached by a

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Affidavit of Christine Baldwin.

10 personal representative of the defendant corporation, who represented himself to be a party by the name of J. Crowell. He told us that he was a director of the Berry Automatic Lubricators Corporation and that the company was a going concern, maintaining a plant at Number 170 Pennington street, Newark, New Jersey. That he thought so much of the stock that he had mortgaged his home to buy as much as he could possibly get. That he had made the investment for the purpose of making a future for his children, as he did not want them to work all their lives.

20 Mr. Crowell further stated as follows: "Get the money to invest in this stock, no matter how you get it, and you will get it back within a few months." He told us a great many other things concerning the virtues of the company which we thought were authentic.

30 Shortly before Mr. Crowell visited us we received a letter in the mail, which has since been destroyed, which letter was addressed to us, bearing the signature of John C. Hoshor, wherein he advised those who were holding any units in the Ford of Canada to sell same and invest the proceeds in stock of the Berry Automatic Lubricators Corporation. I was very much against selling the interests I had in the Ford of Canada stock, and it was only because of the great pressure brought to bear upon me by J. Crowell that I finally yielded to the proposition of selling my holdings in the Ford of Canada, and took therefor in exchange the additional stock of the Berry Automatic Lubricators Corporation.

40 At the time we were visited by Mr. Crowell my husband, Raymond J. Baldwin, the complain-

Affidavit of Christine Baldwin.

ant in this cause, informed Mr. Crowell that the stock we had in the Ford of Canada was in my name, and that I was opposed to selling it. Mr. Crowell assured us that if I would consent to sell the stock which I held in the Ford of Canada, or take in trade therefor the stock of the Berry Automatic Lubricators Corporation, that the Berry stock would advance so rapidly that I would have double my money back in a very short time.

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This gentleman outlined to us that we ought to have more stock, and how much stock we should have, because, he said, if we follow his recommendations, we and seven others could control the stock of the defendant company, and that no one could sell the stock of the company without having our consent. He also informed us that the General Motors Corporation had offered \$23.00 a share for a controlling interest of the stock of the Berry Automatic Lubricators Corporation, but that the officers of the company were opposed to selling the controlling interests of the company, as they were holding out for \$43.00 a share. Relying upon these representations, and believing them to be true, we caused our Ford of Canada stock to be surrendered to Mr. J. Crowell, and in due time received the balance of our stock in the Berry Automatic Lubricators Corporation, through the office of Hoshor-Presby & Co., Inc., making our total holdings in the company 750 shares, costing us a total of \$3,400.

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They assured us that this plant was a going concern, that it was operating fully, that they were making a profit, and caused to be sent out literature, representing that the company would declare a dividend of 20 per cent.

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Affidavit of Christine Baldwin.

10 I have received a copy of the very same form of circular that is attached to the answering affidavit of John C. Hoshor, which is the answering affidavit to the original bill of complaint. This circular is entitled, "Have you any idle dollars? Additional capital is needed to manufacture in quantity a new product of low cost and unequal merit, the necessity for which extends to every piece of machinery requiring lubrication." A photostate copy of this circular is hereto attached and made a part hereof.

20 After our money and the Ford of Canada stock had been given to J. Crowell, we heard nothing more of the company until I caused an investigation to be made, and found that all the representations made to us about the organization of the company, its operations and its profits were false and untrue, and that this company has never been in a position to even earn sufficient to cover its operating expense. That it has never been able to manufacture in quantity the product it claims it was to manufacture. I believe that this company was incorporated solely for the purpose of selling stock, and with no intention of ever operating a legitimate and honest business and are now insolvent.

30 I further believe that under the present conditions this company is insolvent, and believe that the affairs of the company should be investigated, and that a receiver at this time should be appointed to ascertain what became of the assets and the funds received by the directors.

40 At the time J. Crowell called at our house he told us that the stock was getting scarce and that it was selling so fast that they were having difficulty in satisfying everybody with the amount of stock they wanted; that what stock was not

Affidavit of Raymond J. Baldwin.

pany had recently received an offer to sell the controlling interest in this company to the General Motors Company. That they had received an offer of \$23.00 per share, and that the officers of the company were holding out for \$43.00 a share. That during the coming year they would declare a dividend of 20%. Mr. Crowell called my attention to the fact that my wife was the holder of some shares of stock in the Ford of Canada. Shortly before his calling I received a letter from the Hoshor-Presby & Co., Inc., urging me to sell my Ford of Canada stock and to buy additional stock in the Berry Automatic Lubricators Corporation. I was reluctant to do so, and told him that the Ford of Canada stock was in the name of my wife, Christine Baldwin, and that I could do nothing without her first selling the stock she owned, as I was without funds. Mr. J. Crowell gave us to understand that this company was so prosperous that it would be to our advantage to take as much stock as we possibly could buy, and as a safeguard for our children we ought to buy the stock and put it away for them. Mr. Crowell told us that he had invested every dollar he could get, and had mortgaged his home in order to buy stock for his children, so that they would not have to work all their lives.

Mr. Crowell assured me that they had a well equipped plant, producing quantities of the product, and earning profits.

Mr. Crowell again called, and finally my wife, Christine Baldwin, consented to give up the shares of stock in the Ford of Canada, and Mr. Crowell took same on account of part payment of the stock issued to me, and in addition there-
to received the balance in cash, required to pay

Affidavit of Raymond J. Baldwin.

for the stock, which would bring my total holdings up to 750 shares. Mr. Crowell at that time informed me that by taking the additional stock, to bring my holdings up to 750 shares, that I, with seven others, would own the controlling interests of the company, and that the controlling interests of the company could not be sold without my consent. 10

By virtue of such representations I felt that I was safe in parting with my wife's holdings in the Ford of Canada, as well as with the additional cash. After that I did not hear from the company for some time, and made a trip to the plant at 170 Pennington street, Newark, New Jersey, and to the office of Hoshor-Presby & Co., Inc., at 15 Broad street, New York City, where I learned for the first time that they claimed they had invested \$30,000 in machinery and equipment. I have made a personal examination of the plant in Newark, and cannot find, by any stretch of imagination, where \$30,000 was invested for machinery. I have been engaged in the plumbing and heating business for the past number of years, and have a fair knowledge of the value of machinery and equipment, and understand machinery. I am frank to say that no such sum was ever invested in the machinery and equipment in the premises now occupied by the defendant corporation. 20 30

I called at the plant again today, at 146 Summit street, Newark, New Jersey, and personally interviewed William A. Cawley. He showed me around the plant, and showed me the operations they were undertaking to carry out. He told me that the weekly payroll was \$250.00, and that they were turning out about eight cups a day. I know that these cups retail at about 40

Affidavit of Raymond J. Baldwin.

\$6.50 a cup. I had an opportunity to see the men work, and recall that there are about five men working in the plant. Mr. Cawley also told me that he had reduced the payroll from \$750.00 to \$250.00, which is the factory payroll hereinabove referred to.

10 From my observation of the plant today, and prior to this time, and knowing as I do that most of the machinery is second-hand, I do not believe that the intrinsic value of the machinery at the plant as was shown to me today exceeds the value of between \$2,500 and \$3,000. From what William A. Cawley told me today I am convinced that this company could not even earn enough profit to pay the salaries, not alone the cost of operation, rent and other incidental expenses.

20 William A. Cawley pointed out to me a No. 4 Warner & Swasey screw machine, and stated to me that they had bought said machine for \$2,600. I know of my own personal knowledge that this is untrue, because I happened to be personally present in the plant of the defendant corporation at the time said machinery was purchased from the Productive Machine Tool & Parts Company of New York City, which machine was purchased for the sum of \$500.00, and that was
30 bought upon a conditional sales agreement, as per the annexed order.

I know that the plant is being operated at a loss, and know that it cannot exist under the present circumstances with safety to the creditors and stockholders. This company is being overburdened with unnecessary expense, and it is not fully equipped to carry out the purpose and intent of its incorporation.

Affidavit of Raymond J. Baldwin.

Sworn and subscribed to
before me this 7th day of
January, 1926.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

PRODUCTIVE MACHINE TOOL &
PARTS CO., INC.

422 Broome Street, New York

November 10, 1925.

Berry Automatic Lubricators,
146 Summit Street,
Newark, New Jersey.

1— 4 Warner & Swasey Turret Lathe,
equipped with cross slide, toolposts, 9" Uni-
versal Chuck, oil pump, numerous collets
and box tools, pan bed, and countershaft,
serial #60,207. 20

Price F. O. F. our floor.....\$500.00

1—H. G. Barr Sliding Head Sensitive Drill
Press, will drill to center of 14" circle, with
sliding square table, 11" square, including
chuck, and countershaft.

Price F. O. F. our floor.....\$ 40.00 30

Terms:

Cash with order.....\$300.00

One month note..... 80.00

Two month note..... 80.00

Three month note..... 80.00

\$540.00

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Affidavit of J. W. Barbour.

#4 Warner & Swasey Back Geared Power Feed Turret Lathe, wire feed, oil pump, pan bed, and countershaft, serial #372/21/12. Price F. O. F. our floor.....\$300.00

10 Terms: \$400. cash with order.
\$146. one month note.
\$146. two month note.
\$148. three month note.

\$840.

IN CHANCERY OF NEW JERSEY.

20 Between
Raymond J. Baldwin, *et al.*,
Complainant,
and
Berry Automatic Lubricators
Corporation, a corporation,
Defendants. }
On Bill &c.
Affidavit.

30 STATE OF NEW JERSEY. }
COUNTY OF ESSEX. } ss.

J. W. BARBOUR of full age, being duly sworn according to law, on his oath deposes and says that:

40 My name is J. W. Barbour and I am president and treasurer of Barbour, Love and Woodward, Inc. My company sold machinery to the Berry Automatic Lubricators Corporation. Part of it is now secured by conditional sales agreements recorded in the Essex County Court House. On

Affidavit of J. W. Barbour.

open account there was due us the sum of Ninety-eight dollars (\$98.00) which account was past due and finally I succeeded in obtaining a check made by Hoshor-Presby & Company for that amount. I deposited this check bearing date of December 19th, 1925, and shortly thereafter said check was returned because of insufficient funds. I again deposited this check on or about Tuesday, the 29th day of December, 1925, with the request to my bank that it be protested if not honored. It was returned again to me on January 4th, 1926. I immediately gave notice to the Berry Automatic Lubricators Corporation and Hoshor-Presby & Company that I shall insist upon cash instead of checks, and up to this time I have not as yet received the cash although the account is still past due.

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This is the first time I have had any dealings with the Hoshor-Presby & Company.

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My business is that of dealing in machine tools, railway, shipyard and machine shop tools and equipment and our office is located at the Grand Central Terminal Building, New York City. I have been in this business for twenty-five years and I am thoroughly acquainted with the values of machinery, have bought and sold hundreds and thousands of dollars worth of machinery.

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I know the layout of the plant of the Berry Automatic Lubricators Corporation and in my opinion this plant, as a going concern including the costs of installation and equipment of its present machinery is not worth more than six thousand (\$6,000.00). I know of my own knowledge that most of the equipment is second hand machinery and the items that my company sold were second hand with the exception of a shaper and a tool grinder, also a hack saw.

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Affidavit of Mark Hamilton Berry.

I am in no way interested in the present litigation and I am not concerned in the outcome of sale because my company's interest is protected by virtue of its conditional sales agreement. At a forced sale, I do not think this plant would bring over three thousand dollars (\$3,000.00).

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J. W. BARBOUR.

Sworn and subscribed to
before me this 4th day
of January, 1926.

CHARLES S. GINSBERG,
Notary Public of New Jersey.

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IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin, *et al.*,
Complainants,

and

Berry Automatic Lubricators
Corporation, a corporation,
Defendants.

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On Bill, &c.
Affidavit.

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

MARK HAMILTON BERRY, being duly sworn according to law, on his oath deposes and says:

I was one of the employees of the Berry Automatic Lubricators Corporation and was present on December 22, 1925, when the rule to show cause was served upon the defendant corpora-

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Affidavit of Mark Hamilton Berry.

tion. On that day Edwin L. Presby, secretary and treasurer of the defendant company at 146 Summit Street, Newark, New Jersey, immediately undertook to remove from the files of the company large quantities of books, papers, documents and records. I was also present at the plant of the company at the aforesaid address when William A. Cawley did likewise. Mr Christopher H. Berry, the Vice-President and Chief Engineer informed them that they were not to do so, and Mr. Cawley became very abusive, and threatened to do bodily harm. 10

MARK H. BERRY.

Sworn and subscribed to
before me this 11th day
of January, 1926. 20

SADYE G. KAPNER,
Notary Public of New Jersey.

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Affidavit of Anna H. Crooks.

IN CHANCERY OF NEW JERSEY.

10	Between Raymond J. Baldwin, <i>et al.</i> , Complainants, and Berry Automatic Lubricators Corporation, a corporation, Defendant.	On Bill, &c. Affidavit.
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

20 ANNA H. CROOKS, being duly sworn according to law, on her oath deposes and says:

30 I reside at 280 Forrest Road, South Orange, New Jersey. During the summer of 1925 I was at Lake Hopatcong, New Jersey, whereby husband is engaged in business. I noticed a full page ad in the Newark Evening News the early part of June, 1925, and at various other times, advertising the Berry Automatic Lubricator cup, which ad contained a lot of unusually interesting matter concerning the characteristics of the cup, the names of the users of the cup, and other information concerning same. This seemed to be so cleverly worded and appealing that I, relying upon the integrity of the newspaper, felt justified in subscribing to some of the stock. In accordance therewith, I subscribed to fifty shares of stock, and sent my check for \$75.00 on June 17th, 1925, payable to the Berry Automatic Lubricators Corporation, fiscal agents for this company being the Hoshor-Montayne Company.

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Affidavit of Anna H. Crooks.

After the purchase of the fifty shares of stock I received additional literature and personal calls. During the months of July and August, 1925, we were interviewed at various times by a gentleman, by the name of Mr. Crowell. He likewise informed us of the virtues of the company; how successful they were; that great demand was being made for the stock; that they were producing and shipping large quantities of the product; that the dividends were surely going to be of the product; that the dividends were surely going to be at least 20%; that they received an offer to buy the controlling interests of the stock from the General Motors Corporation, for \$12 a share, but that they were holding out for \$15 a share. In response to these statements, I stated to Mr. Crowell that if the stock was so good, it seemed to me that he should try to get most of it for himself, and not let anyone else have it. As a result of all these representations, which were untrue and false, I was fraudulently induced to buy some stock, and I purchased one hundred additional shares, at \$5.00 a share. Shortly thereafter, during the latter part of August, 1925, I was induced to buy another 150 shares at \$5.00 a share, totalling \$750. This makes a total investment on my part of \$1,325. My mother, Mrs. Sarah C. Hauger, who is an elderly lady, to wit, seventy-four years of age, was present most of the times when these conversations took place. Mr. Crowell was so persuasive in his talk and representations that my mother likewise invested in this company, and subscribed to one hundred shares of stock, making a total investment of \$290.00. During our talks Mr. Crowell was so emphatic in his representations to us, that this was a solvent and go-

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Affidavit of Anna H. Crooks.

ing concern, that he represented to us that he had purchased thousands of dollars worth of stock with his own money, as he was satisfied that it was such a good proposition, he became associated with the company, and undertook to sell its stock to those who he thought were entitled to the same consideration he was given, when he was allowed to purchase the stock.

10 From the early part of June until this very day I have been constantly interviewed, and urged to buy more stock, by various representatives of the Berry Automatic Lubricators Corporation, and the stock promoting companies involved. I have received from time to time literature of various types and descriptions, some of which literature gave the names of various alleged users of this lubricating cup. Others stated that the company would declare a 20% dividend at the end of the year, and at various times I received announcements that the valuation of the stock had changed, one from \$1.50 to \$5.00 a share, and from \$5.00 to \$7.50 a share.

20 The last notice which was sent to me was dated December 10th, 1925, mailed by special delivery, contained not only a subscription blank, but also a booklet explaining the purpose of the company, its production, its extensive orders, and in general, giving me the impression that this company was not only a going concern, but was operating fully, and conducting a profitable business. In addition to the enclosures above mentioned, there was a telegram blank, addressed to Hoshor-Presby & Co., Inc., 15 Broad Street, New York City, already written out, with a small space left therein for me to insert the number of shares I was ready to buy, at \$7.50 a share. The telegram was marked "collect."

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Affidavit of Anna H. Crooks.

During the past few days of this month I have been receiving telephone calls and personal visits from a gentleman representing himself to be one Benedict. He informed me that the company had been more successful than expected, and that they were making arrangements to put the stock on the market, (on the curb). That as a result thereof the stock has advanced considerably in value, and that they expected to put the stock on the market for \$9.50 a share. That it was going on the early part of February, 1926, and that they were giving the stockholders of record an opportunity to come into the pool which they were effecting, so as to control the stock of the company. That the present stockholders of record were entitled to subscribe to 50% of their holdings. That he deemed it advisable for us to buy up our rights under the conditions as they existed by virtue of the fact that we were stockholders of record, and he strongly urged us to arrange our funds, so that we could take advantage of the opportunity. He also assured us that if we did not desire to take advantage of the opportunity of subscribing to the additional shares, that we could sell so much of the stock as we desired at the price that was going to be listed on the curb, and in that way we could realize from the sale of the stock up to the point of our investment, and keep the balance on hand, so that all the remaining shares would really have cost us nothing. If we did not want to exercise the rights we had by virtue of our option to purchase at least fifty per cent additional stock because of our present holdings, he would ask us to sign a release, waiving our rights to buy that additional stock. He arranged to call and see us again this day, Satur-

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Affidavit of Anna H. Crooks.

day afternoon, January 9th, 1926, at two o'clock. I have learned since these representations were made that this company has never been in a position to do any of the things it claimed it has been doing, and is doing. I find that the literature was merely literature for the purpose of alluring and inducing innocent people like myself to purchase stock that had no merit. I find that this company is not producing, and is not in a position to meet the representations made by Mr. Crowell and Mr. Benedict. I find that the stock has no market, and that it cannot be sold for \$9.50 a share, or any price approaching that. In fact, I find that the company has not sufficient assets to even equal the amount of money received from the sale of its stock. I have learned that they have sold over 30,000 shares of stock, and that they have received \$102,000 for the sale of the said stock. That they have spent \$99,900, in organization and promotion of this company, and that they are supposed to have a plant that cost \$30,000.

I believe from the facts as they now exist that this company is insolvent, and that it has been grossly mismanaged. That the representations which I relied upon were false, and that even to this date this company has never approached the point of production or stability that has been represented to me in the past, and up to this date.

I believe that an officer of this Court should be appointed, for the purpose of marshaling the assets of this defendant corporation.

ANNA H. CROOKS.

Affidavit of Samuel Portnow.

Sworn and subscribed to before
me this 9th day of January,
1926.

HERMAN WINARSKY,
A Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

10

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c.

Affidavit.

20

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

SAMUEL PORTNOW, being duly sworn according
to law, on his oath deposes and says:

I am a shareholder of the Berry Automatic
Lubricators Corporation, and make this affidavit
for the purpose of intervening as a complainant
in this cause. I hold twenty shares of capital
stock of this company, for which I paid \$30.00,
which stock was later changed to the par value
of \$5.00 a share. I was later advised by the
attached literature that the price had been in-
creased to \$7.50 per share, and later to \$15.00
a share.

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I was introduced to a man by the name of M.
Moser, who represented to me that this com-

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Affidavit of Samuel Portnow.

pany was a going concern. That they were producing the lubricating cup in large quantities; that they were making a profit; that they contemplated declaring a dividend which would be at least 20% at the end of the year. As a result thereof I made an initial payment on June 24, 1925, of \$500 for 20 shares of stock. I paid the balance shortly thereafter. The stock I purchased was at the par value of \$1.50 a share.

From time to time these people endeavored to induce me to purchase more stock, and as late as December 10, 1925, I received, by special delivery mail, a booklet describing the company, its officers, the names of the users of its product, a photographic view of the patent, and a statement representing that the company is producing large quantities of its product. Enclosed in said special delivery mail was a letter addressed and signed by John C. Hoshor, a copy of which is hereto attached and made a part hereof, and marked "Exhibit A and C." There was likewise enclosed therein a blank telegram for me to sign, a copy of which is hereto attached and made a part thereof, and marked "Exhibit B." Likewise the said letter marked "Exhibit A and C" contained an announcement that the stock had been raised to \$7.50, and would be raised to \$15.00 a share.

I have at all times been led to believe that this company was solvent and a going concern, and never had a doubt but that the representations made to me that this defendant corporation was a going concern, and that it was organized for legitimate purposes was correct. I believed the representations made, and on the strength of these said representations purchased these shares of stock.

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Affidavit of Samuel Portnow.

I further show that since receiving this literature I visited the plant now maintained by the defendant corporation at 146 Summit street, Newark, New Jersey, and found that this company is not prepared or sufficiently equipped to manufacture in quantity the product as outlined in its prospectus. I have personally made an observation of the manner in which they are operating. I have found as late as January 6, 1926, that they only employ five men in the shop. That some of these men are mechanics, and others are general utility men. I watched them for two hours, and in that period they turned out on the lathe just one body cup. I am an experienced electrical construction engineer, and have been engaged in that work for the past twelve years. I know from my opinion that an operation of that kind should not take more than between fifteen and thirty minutes at the most. It is my opinion that this is wasteful. These operations should be carried on with a screw machine, which if properly installed and regulated should produce at least six times as much work in the same amount of time.

I further say that from my observation this company cannot earn sufficient to even cover its operating expense, under the manner and mode which it is now operating. I know that a cup of this size that I observed being machined and developed would retail at the price of \$6.50. It is estimated that the profit would be at least 100% over the selling price. Therefore, in my opinion, at the rate of two hours per cup, the most that could be turned out would be four or five cups a day, and that I am informed has been the general average of production of the cups since the inception of the company.

Affidavit of Samuel Portnow.

I have also tabulated the machines at the plant. I find that there are nineteen pieces of machinery, as per the annexed schedule marked "Exhibit D." All these pieces of machinery are not intrinsically worth more than \$2,500, and can be replaced for that amount.

10 I also notice that they have been wasteful in the use of electric power. They are operating and using a ten-horsepower motor, three-phase, 220 volts, G. E. model, for the use of two machines. This is a deliberate waste of power and operating expense, which costs the company at the rate of \$4.50 per day for power that is absolutely uncalled for, and the requirements and needs of the company could be furnished at less than one-half that expense. Most of the machinery in this plant is second-hand.

20 It is my opinion that this plant cannot exist under its present conditions. That it is being operated at a loss. I also observe that there is no stock on hand but a few raw castings. In my opinion this company is not being operated as a solvent concern, and that it is insolvent.

SAMUEL PORTNOW.

30 Sworn and subscribed to
before me this 11th day
of January, 1926.

SADYE G. KAPNER,
A Notary Public of New Jersey.

Affidavit of Samuel Portnow.

“EXHIBIT A”

and

“EXHIBIT C.”

HOSHOR, PRESBY & CO.,

Fifteen Broad St., New York.

December 10, 1925.

10

Mr. Samuel Portnow,
179 Leslie Street,
Newark, N. J.,

Dear Mr. Portnow:

We know that you will be interested in the enclosed souvenir booklet issued for the stockholders of the Berry Automatic Lubricators Corp.

Of the 50,000 shares of stock issued, but 22,000 shares remain, which is now being offered to investors at \$15 per share.

20

It is the wish of the officers of this company, however, that present stockholders be given an opportunity of increasing their holdings at the former price of \$7.50 per share.

We will, therefore, permit each stockholder to purchase up to, but not in excess of, the number of shares that he already holds. In other words, if you now own 50 shares, you may, at this low price of \$7.50 per share, buy up to 50 additional shares.

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We cannot impress upon you the confidence we have in the future of this company and feel certain that in a very short time you will be refusing a very large figure for your holdings.

It will be necessary that we withdraw this offer at noon on Thursday, December 17. Will you, therefore, be good enough to send in your

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Affidavit of Samuel Portnow.

reservation—preferably by wire—before that date?

Very truly yours,
HOSHOR PRESBY & CO., INC.

By

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“EXHIBIT B.”

Hoshor-Presby Co.
15 Broad Street,
New York City.

Reserve.....shares Berry Automatic
Lubricator Stock

(signed)

20 Charges collect

“EXHIBIT D.”

#3 Garvin Screw Machine
#2 Bordan & Oliver Screw Machine
#4 Warner & Swaney Screw Machine
Cincinnati Universal Milling machine
1 Miller (hand miller)
30 1 Single Spindler Drill press
2 single spindle drill press
shaper
power hack screw
Arbor press
Milling attachment
pratt and Whitney lathe
Springfield lathe
Speed Lathe
Tool Grinder

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Affidavit of John D. Miller.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin, *et al.*,
Complainant,

and

Berry Automatic Lubricators
Corporation,
Defendants.

On Bill, &c. 10
Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

JOHN D. MILLER, being duly sworn according
to law, on his oath deposes and says: 20

I am the Credit Manager of Ludlow & Squier,
and am personally in charge of the account of
the Berry Automatic Lubricators Corporation.
This corporation is indebted to us in a large sum
of money, all of which is not yet due. There,
however, was past due part of the account,
amounting to \$215.11, which I endeavored to col-
lect. I made several demands on the said com-
pany at the Newark office. As a result of my 30
demands I received a check dated December 19,
1925. Said check was issued by the Hoshor-
Presby & Co., Inc., 15 Broad street, New York
City, on account of payment of that part of the
indebtedness due us from the Berry Automatic
Lubricators Corporation. The check was depos-
ited, but was returned for insufficient funds, and
I insisted upon cash.

In lieu of cash, however, Hoshor-Presby & Co.,
Inc., induced me to accept their check #508 40

Affidavit of John D. Miller.

10 bearing date of December 29, 1925, to the order of Ludlow & Squier, in the sum of \$215.11, drawn against alleged funds to their credit in the United National Bank of New York, Fifth avenue and Thirty-third street branch. This check has been returned to us for insufficient funds and has been protested. There is now due and owing on this check the sum of \$1.30 protest fees, making a total sum of \$216.41 due on this check.

JOHN D. MILLER.

Sworn and subscribed to before me
this 5th day of January, 1925.

20 JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

HOSHOR, PRESBY & CO., INC.
15 Broad Street, New York, N. Y.

No. 508

New York, Dec. 29, 1925.
Ludlow & Squier \$215.11/100
Insured Insured
30 Two hundred fifteen dollars eleven cents Dollars

HOSHOR, PRESBY & CO., INC.

John C. Hoshor, Pres.
J. K. Hoshor, V. Pres.

To United National Bank in New York
Fifth avenue at 33rd street, New York

Affidavit of Harry Chapin.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin, *et al.*,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
Defendant.

On Bill, &c.

Affidavit.

10

STATE OF NEW JERSEY, {
COUNTY OF ESSEX. { ss.

HARRY CHAPIN, being duly sworn according to law, on his oath deposes and says:

20

I am in charge of the sales department of Paul H. Jaehnig, Inc. We have an account with the Berry Automatic Lubricators Corporation. That said account is now almost two months past due. I have made numerous demands for payment of this account, and finally on December 19, 1925, I succeeded in obtaining a check from the officers of the Berry Automatic Lubricators Corporation, the said check being drawn by Hoshor-Presby & Co., Inc., on the United National Bank of New York, Fifth avenue and Thirty-third street branch, in the sum of \$299.04. This check was deposited in the usual course of business, and we endeavored to collect same. However, it was returned marked "insufficient funds." Since that time I have made efforts to collect same, but have been unable to do so. There is now due and owing on the account the sum of \$300.29, and \$1.25 representing protest fee.

30

HARRY CHAPIN.

40

Affidavit of Harry Chapin.

Sworn and subscribed to before me
this 5th day of January, 1926.

JENNIE MICHELSTEIN,
A Notary Public of N. J.

10 HOSHOR, PRESBY & CO., INC.
 15 Broad Street, New York
 New York.

No. 505. New York, December 19th, 1925

Pay to the order of

Paul H. Jaehnig, sec.....\$299.04

Two hundred ninety nine dollars and four
cents Dollars

To United National Bank in New York

20 Fifth Avenue and 33rd St.,
New York, N. Y.

HOSHOR, PRESBY & CO., INC.

Signed (John C. Hoshor, Pres.)

(I. K. Hoshor, V. Pres.)

30

40

Affidavit of Fred B. Williamson.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

Berry Automatic Lubricators
Corporation, a corporation,
and John C. Hoshor,
Defendants.

On Bill, &c. 10
Affidavit.

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

FRED B. WILLIAMSON, being duly sworn according to law, on his oath deposes and says: 20

I am the proprietor of the Reliable Machine Screw Co. of the City of Newark, State of New Jersey. In behalf of my company I undertook to do some work and furnish materials and supplies to the Berry Automatic Lubricators Corporation. That charges accumulated in the sum of \$130.98, which amount I endeavored to collect. I finally did succeed in getting a check, bearing date of December 19th, 1925. Said check was issued by the Hoshor-Presby Co., Inc., and was made payable to my concern. I deposited this check in my account in the Clinton Trust Company in the due course of business. That same was returned marked "insufficient funds" by the corresponding banks, and the bank on which the check was drawn, to wit, the United National Bank of New York, being the depository of the Hoshor-Presby Co., Inc. The check was returned to me on December 29th, 1925. A copy 40

Affidavit of Fred B. Williamson.

of the check is hereto attached and made a part of this affidavit.

The total amount due by virtue of said check and protest is \$130.03. That demands have been made for

10 I believe that the defendant corporation is insolvent, and pray that I be permitted to appear as an intervening complainant.

FRED B. WILLIAMSON.

Sworn and subscribed to before me
this 31st day of December, 1925.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

20 No. 150. New York, Dec. 19th, 1925.

UNITED NATIONAL BANK IN NEW YORK.
Fifth Ave. at 33rd St.

Pay to the order of Reliable Machine Screw
Co. \$130.98

Insured One Hundred Thirty Dollars Ninety
Eight Cents, Ins.

HOSHOR PRESBY CO., INC.

E. M. Bodenbender, V. Pres.

30

J. K. Hoshor, V. Pres.

Affidavit of Fred B. Williamson.

UNITED STATES OF AMERICA,)
 STATE OF NEW YORK,) ss.
 COUNTY OF NEW YORK.)

On the 28th day of December, in the year
 nineteen hundred and twenty-five, at the request
 of the holder thereof, I, Horace E. Gill, a notary
 public of the State of New York, duly commis- 10
 sioned and sworn, did present the original bill
 of Exchange of Check hereto annexed to

UNITED NATIONAL BANK

at 5th Ave. and 33rd St., New York City.
 and demanded payment thereof, which it re-
 fused saying:

THERE WERE NOT SUFFICIENT FUNDS TO PAY THE
 CHECK

WHEREUPON, I, the said Notary, at the request
 aforesaid did PROTEST, and by these presents do 20
 publicly and solemnly PROTEST as well against
 the drawer, Acceptor and Endorsers of said Bill
 of Exchange, or Check, as against all others
 whom it doth or may concern, for Exchange, Re-
 Exchange and all costs, damages and interest
 already incurred, and to be hereinafter incurred,
 for want of payment of the said Bill of Ex-
 change or Check.

THIS DONE AND PROTESTED, in the City of New
 York aforesaid, in the Presence of John Doe and 30
 Richard Roe. Witnesses. In testimonium veri-
 tatis.

HORACE E. GILL,
 Notary Public.

Advertisement in Newark Evening News.

**HAVE YOU
ANY IDLE DOLLARS?**

Additional Capital is needed to Manufacture in
Quantity a New Product of Unequalled Merit
Low Cost, and the Necessity for Which
extends to Every Piece of
Machinery requiring Lubrication.

10

**MANY ORDERS NOW WAITING TO BE
FILLED**

This offering is being made to obtain Working
Capital to take care of orders now on hand.

50,000 Shares

**BERRY AUTOMATIC LUBRICATORS
CORPORATION**

Capital Stock

20

BUSINESS

The Company owns the patent rights and all
other rights to the Berry Automatic Lubricators,
scientifically constructed Grease Cups for all
kinds of engines, automobiles, locomotives and
machinery. The Company is actively engaged
in the manufacture and distribution of these
Grease Cups.

30

PRODUCT

Grease Cups are used on practically every
piece of machinery where there is a bearing or
where a wheel turns. It is estimated that the
demand for Grease Cups exceeds 300,000,000 an-
nually.

Berry Automatic Grease Cups are guaranteed
to be superior in every respect to any article
used for similar purposes on the market today.
Engineers, Master Mechanics and Purchasing

40

Advertisement in Newark Evening News.

Agents who are familiar with Berry Automatic Grease Cups recognize their superiority.

Berry Automatic Grease Cups will work thoroughly and efficiently without requiring human supervision except for refilling when cup is empty.

They are dust proof. They will not leak.

10

They have no threads to strip or cross.

They are so constructed that the grease flows in a constant regulated amount on the bearing and not on the outside of the cup.

They save Grease and Labor Costs—and at the same time the bearings are more uniformly and better lubricated.

They eliminate the necessity for repairs caused by faulty lubrication.

Their Cost is Small (Prices \$.75 up)—One machine shut down for repairs is loss of time and more money than sufficient to pay for the installation of Berry Automatic Grease Cups on many machines.

20

MANUFACTURE

The Corporation has entered into a contract with **Barnhart Bros. & Spindler of Chicago, Illinois**, whereby the latter will manufacture the parts necessary for the **Grease Cups**. Same will be assembled and shipped by the Corporation from Newark, New Jersey. This will obviate the necessity of tying up large capital in plants, machinery, etc., at the beginning.

30

The Corporation will start production of these Grease Cups in quantity of approximately 1000 per day. It is expected that this rate will be increased rapidly.

40

Advertisement in Newark Evening News.

DISTRIBUTION

10 The Company's products are now being distributed through its Representatives. Branch offices are to be established in Chicago, Boston, St. Louis, Detroit, Pittsburgh, Birmingham and other large cities. Contracts for further distribution by jobbers are being negotiated.

It is expected that distribution in Great Britain, Canada and other foreign countries will be started shortly.

MANAGEMENT

The management of the Corporation is in hands of capable and efficient men, who thoroughly realize both the Necessity and the profit possibilities of this product.

20 Officers and Directors are: John C. Hoshor, President; Christopher H. Berry, Vice-President and Chief Engineer; Colquitt Lane, Vice-President; Edwin L. Presby, Secretary and Treasurer, and George Julian Houtain, General Counsel. The Executive offices of the Corporation are located at 15 Broad Street, New York City.

PURPOSE OF FINANCING

30 This offering is being made because Working Capital is needed to take care of orders for Berry Automatic Grease Cups now on hand together with additional orders that are continually being received, and to establish several branch offices that are necessary to the welfare of the business.

***CAPITALIZATION**

The capitalization of the Company at present consists of 1,000,000 shares of capital stock of par value of \$1 each.

Advertisement in Newark Evening News.

DIVIDENDS

The management expects that during the first year they will be able to pay dividends of 20%.

†PRICE \$1.50 PER SHARE

*†It has been voted by the Board of Directors to increase the capitalization of this company on June 20th to 1,000,000 shares of par value of \$5 each. After that date each share of \$1 par value in this company will be exchanged for one new share of \$5 par value fully paid and non-assessable without any additional payment from shareholders. 10

Make All Checks Payable to the Company
BERRY AUTOMATIC LUBRICATORS
CORPORATION 20
 671 Broad Street, Tel. Mitchell 0430
 Newark, New Jersey

“I have used the Berry Automatic Grease Cup on our engines in this market and have found them to be satisfactory in every respect, and believe they are the only up-to-date cup on the market at this time.”

Department of Parks and Public Property, 30
Newark, New Jersey.

“I have had two of the Berry Automatic Grease Lubricators for the past month and find them to be the best that I have ever used.”

The Manufacturers Can Co., Newark,
New Jersey.

“We have had two of the Berry Automatic Grease Lubricators for the past three months and find them to be the best we have ever used. 40

Advertisement in Newark Evening News.

"Berry Automatic Lubricators keep our bearings well lubricated for a period of from six to eight days longer than the ordinary types."

Eastern Steel Castings, Newark, New Jersey.

10

"Find a great and new invention and buy its stock," was the advice of Alexander Bell, inventor of the telephone.

20

The Eureka Vacuum Cleaner Company started business in 1909 with capital of \$1,000. Just recently the original investors in this Company divided accumulated profits of \$12,000,000.

\$100 Invested in	Has Returned
—Bell Telephone	\$108,000.00
—Burroughs Adding Machine	82,680.00
—Welsbach Gas Mantles....	100,000.00
—Underwood Typewriter ..	76,650.00
—National Cash Register ..	84,000.00
—Gillette Safety Razor.....	96,700.00
—Eastman Kodak	112,000.00

30

A man who invested \$500.00 at the beginning of Prest-O-Lite Company twelve years ago, later refused \$3,000,000 for his stock.

These companies had Products of Merit, for which Necessity existed, and the original investors have been amply repaid. Many other instances could be cited.

The Outlook for Berry Automatic Lubricators Corporation is almost identical to the outlook of the above-named companies at their inception.

40

Advertisement in Newark Evening News.

Wherever Wheels Turn

(Illustration)

Exterior view of Berry Automatic Grease Cup when filled.

(Illustration)

Sectional view of a Berry Automatic Grease Cup after Cup has emptied itself (cover removed). Spring has forced Plunger to the top, all the Grease having flowed through the Orifice and the Tube, down through the Pipe Shank and onto the Bearing. 10

Lubrication Guarantee

We Guarantee

BERRY AUTOMATIC GREASE CUPS

Patents Pending. All Rights Reserved 20

to be vastly superior to any article used for similar purposes on the market today.

We Guarantee that

BERRY AUTOMATIC GREASE CUPS

will more than pay for themselves the first six months, by reducing grease costs and labor costs, and at the same time lubricate more uniformly and evenly in a constant regulated amount without requiring human supervision except for refilling when Indicator shows Cup to be empty. 30

We Further Guarantee to refund the purchase price if

BERRY AUTOMATIC GREASE CUPS

do not fulfill all of the above statements or are unsatisfactory for any cause whatever.

Berry Automatic Lubricators Corporation,

JOHN C. HOSHOR,

President.

40

Advertisement in Newark Evening News.

Orders for Berry Automatic Grease Cups have already been received from the following:

	Crucible Steel Co. of	
	America	New York City
10	New York Central R. R.	New York City
	Westinghouse Lamp Co.	Bloomfield, N. J.
	Hormiguero Sugar Corporation	New York City
	Manufacturers Can Co.	Newark, N. J.
	Dept. of Parks & Public Property	Newark, N. J.
	Barbour Flax Spinning Co.	Newark, N. J.
	Morten Engebretsen.....	Oslo, Norway
	Public Service Elec. & Gas Co.	Newark, N. J.
20	Mallinckrodt Chemical Works	Jersey City, N. J.
	Duratex Corporation	Newark, N. J.
	American Felt Company..	Boston, Mass.
	Weldon Roberts Rubber Co.	Newark, N. J.
	Thomas C. Pole.....	New York City
	Claremont Waste Mfg. Co.	Claremont, N. H.
	The Thomas & Betts Co.	Elizabeth, N. J.
	R. B. Halsey & Co.....	Bridgeport, Conn.
	Citro Chemical Co.....	Maywood, N. J.
	Prest-O-Lite Co., Inc.....	Elkton, Md.
30	H. G. Shepard & Sons.....	New Haven, Conn.
	Jones Hollow Ware Co.	Baltimore, Md.
	Verona Chemical Co.....	Newark, N. J.
	Eastern Steel Castings....	Newark, N. J.
	Titusville Iron Works Co.	Titusville, Pa.
	Maas & Waldstein Co.....	Newark, N. J.
	H. McLachlan & Co., Inc.	Danbury, Conn.
	Chase Metal Works.....	Waterbury, Conn.
	Goerke Co.	Newark, N. J.
	National Brass Mfg. Co.	Rochester, N. Y.
	Torrington Mfg. Co.....	Torrington, Conn.
40	Samuel R. Parry.....	Rochester, N. Y.
	and many others	

Advertisement in Newark Evening News.

**Fill Out This Form, Detach, and Mail With
Check, Draft or Money Order**

Application for Shares

**BERRY AUTOMATIC LUBRICATORS
CORPORATION**

Capital Stock

Date.....

Berry Automatic Lubricators Corporation,
671 Broad Street, Newark, N. J.

Gentlemen:

I hereby subscribe for.....shares of
Capital Stock (\$1 par value) of Berry Auto-
matic Lubricators Corporation at \$1.50 per
share (each share exchangeable after June
20th for one new share of \$5 par value,
fully paid and non-assessable, without any
additional payment).

Check drawn to your order for \$.....
is enclosed in payment for same.

Kindly register certificate in name of....
.....

Address.....

Signed.....
(Print name)

.....

WE INVITE FULLEST INVESTIGATION

10

20

30

40

*Answer to Amended Bill of Complaint.***ANSWER TO AMENDED BILL OF
COMPLAINT.**

The defendant, by way of answer to the Amended Bill of Complaint filed in the above-entitled cause, says:

10 1. That it admits the matters and things set forth in Paragraph 1 thereof.

2. That this defendant neither admits nor denies the matters and things set forth in Paragraph 2 of the Amended Bill of Complaint, but refers to the original Bill of Complaint and the affidavits thereto annexed.

20 3. It admits the matters and things set forth in Paragraph 3 thereof, except that it denies that the Amended Bill of Complaint, in the form in which it appears, was filed by virtue of an order of this Court.

30 4. That it denies the matters and things set forth in Paragraph 4 thereof, except that it admits that the said Samuel Portnow purchased twenty shares of the capital stock of this company for the sum of \$30, and that said shares were subsequently exchanged for stock of a par value of \$5 per share.

40 5. It admits that James P. Welch holds the check of the defendant corporation in the sum of \$75, on which there is due \$2.60 for protest fees, drawn on the National Newark and Essex Banking Company, but this defendant says that the money called for by said check is, and has for several days been, in said bank, available for the payment of said check when said check shall be presented to it by the holder thereof, and that if the said James P. Welch will present

Answer to Amended Bill of Complaint.

said check, properly identifying himself as the holder thereof, the same will be paid.

6. This defendant says that at one time the Albert Company was a creditor of the defendant to the extent of \$64.35, but says that said sum has been paid in full and that the Albert Company is no longer a creditor of this defendant. 10

7. This defendant admits that it is a corporation organized under and by virtue of the laws of the State of Delaware, for the purpose, among other things, of engaging in the manufacture of lubricator or grease cups, but denies that it was limited to manufacturing the same under a patent license from Christopher H. Berry.

8. This defendant admits that this defendant was organized by Christopher H. Berry and John C. Hoshor, and that John C. Hoshor resides in the City of New York, and that Christopher H. Berry was the inventor of the lubricator device now being manufactured by the defendant, but it denies the other matters and things set forth in said Paragraph 8 of the Amended Bill of Complaint. 20

9. This defendant denies the matters and things set forth in Paragraph 9 thereof, except that it admits that it was organized at the instance of Christopher H. Berry and John C. Hoshor; that it never has had any property or assets in the State of Delaware, except its corporate franchise; that it there maintains an office and agent in accordance with the laws of the State of Delaware. 30

10. This defendant admits the matters and things contained in Paragraph 10 thereof. 40

Answer to Amended Bill of Complaint.

11. This defendant denies the matters and things set forth in Paragraph 11 thereof, except that it admits that this defendant did procure from the State of New Jersey a license to do business therein, and it further says that the entire capital stock of the defendant company was issued in return for the title to the certain patent rights of Christopher H. Berry for the manufacture of a grease cup, which said assignment of patent rights to the defendant contained a clause whereby in the event of bankruptcy or dissolution of this defendant said rights would revert to the said Christopher H. Berry; that of said stock issued, said Christopher H. Berry did deliver into the treasury of this company 50,000 shares; that it is informed and verily believes that the said Christopher H. Berry surrendered to the said John C. Hoshor some of the shares thus obtained by the said Christopher H. Berry, but how many or for what purpose or for what consideration, if any, this defendant has no knowledge, and conceives itself to be not concerned therewith; that the defendant received the said 50,000 shares of its stock, to be sold for its benefit from time to time, as it should determine, and that according to the books of this company John C. Hoshor and Christopher H. Berry hold a controlling voting interest in the stock of this corporation.

12. This defendant denies the matters and things set forth in Paragraph 12 of the Amended Bill of Complaint.

13. This defendant admits the matters and things set forth in Paragraph 13 of the Amended Bill of Complaint.

Answer to Amended Bill of Complaint.

14. This defendant admits the matters and things set forth in Paragraph 14 of the Amended Bill of Complaint.

15. This defendant denies the matters and things set forth in Paragraph 15 of the Amended Bill of Complaint, except that this defendant admits that the Hoshor, Presby & Co., Inc., or its predecessor, Hoshor, Montanye & Co., on the date thereof, did cause to be published an advertisement in the Newark Evening News and Newark Star-Eagle, a copy of which is attached to the Amended Bill of Complaint (the exhibit attached to the copy of the Amended Bill of Complaint furnished this defendant not containing any designation as Exhibit D, or otherwise), and that it also published and distributed on the date thereof a letter like or similar to that designated as Schedule A, and that this defendant is informed and verily believes that salesmen were employed by the said firm to solicit subscriptions to the stock of this defendant; that it denies that the said John C. Hoshor or either of his said firms were by this company authorized to, and denies that they did in fact make, the representations designated in Paragraph 15 of the Amended Bill of Complaint.

16. That it denies the matters and things set forth in Paragraph 16 of the Amended Bill of Complaint, except that it says that for the real facts pertaining to the matters and things therein alleged this defendant refers to an audit and examination of the company's affairs, made by James J. Hastings, and his report thereon is hereby made a part hereof.

17. It denies the matters and things set forth in Paragraph 17 thereof, but says that its op-

Answer to Amended Bill of Complaint.

erations were first commenced at 170 Pennington street, Newark, N. J., and that because of the small size of the quarters this company moved to its present location at 146 Summit street, Newark, N. J.

10 18. It denies the matters and things set forth in Paragraph 18 of the Amended Bill of Complaint, and says that for an exact statement of the assets and liabilities of this company the defendant refers to the auditor's report heretofore mentioned, and this defendant says it never had any contract with General Motors Company and never knew of its displaying any interest in this company, and it further says that no one was ever authorized to, and believes that no one ever did, make any representation to the contrary, and this defendant says that while as yet
20 the company has not been placed upon a profit-making basis, it is in the same position in which any manufacturing company is in the first few months of its existence, namely, of putting itself on a quantity production basis, and that this company has now reached that stage and can henceforth operate at a profit.

30 19. This defendant denies the matters and things set forth in Paragraph 19 of the Amended Bill of Complaint, and for an exact statement of the matters and things therein alleged this defendant refers to the auditor's report aforesaid.

20. This defendant says that all of the items referred to in Paragraph 20 of the Amended Bill of Complaint have been paid in full.

40 21. This defendant denies the matters and things set forth in Paragraph 21 of the Amended

Answer to Amended Bill of Complaint.

Bill of Complaint, and this defendant says that it is entirely and wholly solvent.

22. This defendant denies the matters and things set forth in Paragraph 22 of the Amended Bill of Complaint.

23. This defendant denies the matters and things set forth in Paragraph 23 of the Amended Bill of Complaint, except as heretofore stated. 10

24. This defendant denies the matters and things set forth in Paragraph 24 of the Amended Bill of Complaint, except that this defendant has at all times been necessarily dependent for its working capital upon the sale of its stock, and it says that its stock is still being sold.

25. This defendant denies the matters and things set forth in Paragraph 25 of the Amended Bill of Complaint, and this defendant says that it is determined to and at once will cancel the aforesaid contract with the said Hoshor, Montanye & Co. and/or Hoshor, Presby & Co., Inc., and that the said Hoshor, Presby & Co., Inc., has consented to its cancellation. 20

26. This defendant denies the matters and things set forth in Paragraph 26 of the Amended Bill of Complaint. 30

27. This defendant denies the matters and things set forth in Paragraph 27 of the Amended Bill of Complaint.

28. This defendant denies the matters and things set forth in Paragraph 28 of the Amended Bill of Complaint.

This defendant charges the fact to be that Christopher H. Berry is the one who instigated, and who in reality is pressing, the proceedings 40

Answer to Amended Bill of Complaint.

in this case, and that he is actuated in the premises by the thought that the appointment of a receiver, or the adjudication of the defendant corporation as insolvent, will, under the terms of the assignment by him to the company of the patent rights, operate to cause such patent rights to revert to him, whereby, without cost to himself and at the expense of the other stockholders, he will gain the entire benefit of all of the advertising, missionary and organization work which to date has been done by the company, and for which the other stockholders have paid, and that the complainants are wittingly or unwittingly assisting him in this scheme, and in evidence of this charge this defendant points to the fact that when as one of the large stockholders Mr. Berry would naturally and ordinarily be tempted to preserve the company, he is, as his affidavits show, doing all that he can to cause the appointment of a receiver; and further, as appears by the original bill or affidavits at the directors' meeting of the company, he was represented by an attorney, one Grossman, whom this defendant charges is and has been actively associated with Samuel Hollander, complainant's original solicitor of record, and that Mr. Berry, in spite of his very evident wish that a receiver be appointed for the company, and notwithstanding the fact that he is the owner of 200,000 shares of the company's stock, and notwithstanding the fact that he is represented legally by the same office as were the complainants originally, did not see fit to appear in the proceeding as party complainant, and this defendant charges that the only reason that he did not do so was because he did not wish his real underlying purpose to become quite so obvious.

Answer to Amended Bill of Complaint.

This defendant further charges that the granting of the prayers of the bill will be to deprive the other stockholders of all hope of ever realizing on their investment, and to assist Mr. Berry in obtaining the return of his patent rights, if it should be held that the appointment of a receiver in this cause should, as a matter of law, fall within the terms of the reversionary condition contained in the patent assignment. 10

This defendant prays that the Bill of Complaint and Amended Bill of Complaint be dismissed, and that the relief therein prayed for be denied.

This defendant files this answer without prejudice to its right to move to strike out said Bill of Complaint, and said Amended Bill of Complaint, or any part thereof, on any ground on which it may be by counsel advised is proper. 20

BURNETT, SORG, MURRAY & DUNCAN,
Solicitors for and of Counsel with Defendant.

30

40

Affidavit of William A. Cawley.

**AFFIDAVITS IN ANSWER TO
AMENDED BILL OF COMPLAINT.**

IN CHANCERY OF NEW JERSEY.

10	Between Raymond J. Baldwin, <i>et al.</i> , Complainants, and Berry Automatic Lubricators Corporation, a corporation, Defendant.	} On Bill, etc. } Affidavit in } Answer to } Amended } Bill of } Complaint.
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20 STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

WILLIAM A. CAWLEY, of full age, being duly sworn according to law, on his oath deposes and says: I have read the copy of the amended bill of complaint and the affidavits in the above matter, furnished to the counsel of the company by the complainant's counsel.

30 The company's only obligations, at the present time, both matured and unmatured, computed to Monday, January 18, 1926 (with the exception of the office and workmen's salaries accrued since Thursday last) are as follows:

40	Bannister & Pollard	\$29.98
	Coe & Company, James	8.79
	Couse & Bolten	17.04
	Crowell Lumber Company, John	12.26
	Electrified Water Company	2.20
	Hewitt & Sons, John	43.50
	American Machinist	309.06
	Ludlow & Squier	72.62

Affidavit of William A. Cawley.

Midvale Philadelphia Company	17.21	
New York Telephone Company	31.96	
New Jersey Toilet & Towel Service....	2.40	
Public Service Electric & Gas	37.22	
Sassoo, Felix	3.45	
Barnhart Bros. & Spindler	120.97	
Hanson, Van Winkle Company	1.40	10
Albert & Company	3.96	
Salaries	595.00	
Amount still due on purchase price of machinery and equipment, secured by conditional bills of sale and/or chattel mortgages, and payable in install- ments, which said installments are paid to date, the next one not matur- ing until February	1,100.00	
Amount due American Railway Express Co. for C. O. D. shipment from Barn- hart Bros. & Spindler of manufactured material ready to be taken up by this company for assembling by it.....	315.21	20
Total	\$2,724.14	

At the present time the company has on hand orders for its products as follows:

Company	Ordered	Quantity	Cost.	
Amer. Agricultural Chemical	8-11-25	3— 3 oz.	\$ 6.75	30
Amer. Radiator Company	10-15-25	12— 1 oz.	24.00	
Amer. Spiral Pipe Co.	12-30-25	1—½ oz.	1.35	
Amer. Tube & Stamping (Part shipped)	9-21-25	2— 6 oz.	13.00	
Amer. Type Founders Co.	12- 3-25	12— 1 oz.	24.00	
Barbour Flax Spinning Co.	4-10-25	3— 3 oz.	12.75	
Beech-Nut Packing Co.	9-30-25	2— 3 oz.	11.00	
		6— 1 oz.	24.00	
		2—½ oz.	5.50	
		2—¼ oz.	4.70	
Boston Gear Works, Inc.	8-20-25	1—½ oz.	1.00	40
		1—¼ oz.	.90	
		1—⅛ oz.	.85	
Brooke Iron Co., E. & O.	11-17-25	2— 1 oz.	4.00	
		2—½ oz.	2.70	

Affidavit of William A. Cawley.

	Company	Ordered	Quantity	Cost.
	Carbine Harang Machinery & Supply Co.	10-28-25	3— 1 oz.	6.00
			3— 3 oz.	10.50
	Certain-teed Products Corp.	9-22-25	12— 1 oz.	16.50
	Chicago Macaroni Co.	12-19-25	1— $\frac{1}{2}$ oz.	2.75
			1— 1 oz.	4.00
	Citro Chemical Co. of America	6- 1-25	1— $\frac{1}{8}$ oz.	1.25
	Coatesville Boiler Works	11-21-25	12— 1 oz.	24.00
			8— $\frac{1}{2}$ oz.	10.80
10	Columbia Phonograph Co., Inc.	9-15-25	3— 1 oz.	4.50
			3— 3 oz.	6.75
	Congress Hotel Co.	11-11-25	2— $\frac{1}{2}$ oz.	2.70
	Continental Can Co. Inc.	6-30-25	6— $\frac{1}{2}$ oz.	6.00
			6— 1 oz.	9.00
	Co-operative Foundry Co.	10- 5-25	2— 1 oz.	4.00
			2— $\frac{1}{2}$ oz.	2.70
	Crescent Insulated Wire & Cable Co., Inc.	9-21-25	2— 1 oz.	3.00
	Crossman Company	12- 1-25	6— 3 oz.	21.00
	Cutler Street Garage	7-27-25	12— $\frac{1}{16}$ oz.	9.00
	Doehler Die Casting Co.	11-14-25	3— $\frac{1}{4}$ oz.	3.75
			3— $\frac{1}{2}$ oz.	4.05
	Excel Laundry Wet Wash	8- 1-25	2— 1 oz.	3.00
	Florence Pipe Foundry & Machine	10-16-25	6— 3 oz.	21.00
	Giles Printing Co.	8- 4-25	4— 3 oz.	9.00
20	Gurney Elevator Co. Inc.	7-22-25	1— $\frac{1}{4}$ oz.	.90
			1— 3 oz.	2.25
	Hewitt Foundry Co.	12-17-25	2— 1 oz.	8.00
	Hormiguero Central Corp.	7-20-25	12— 1 oz.	16.50
	Horween Leather Co.	10-19-25	2— 1 oz.	4.00
	Hunt Pen Co., C. Howard	10-16-25	2— $\frac{1}{4}$ oz.	2.50
	Illinois Glass Co.	11- 3-25	6— 1 oz.	12.00
	Illinois Metal Special. Co.	11- 7-25	2— 1 oz.	4.00
	Ingersoll-Rand Company	8-20-25	3— 1 oz.	6.00
	International Harvester Co.	11-27-25	4— $\frac{1}{4}$ oz.	5.00
			4— $\frac{1}{2}$ oz.	5.40
			2— 1 oz.	4.00
	International Motor Co. (Part shipped)	10- 2-25	2— 6 oz.	9.00
	Irrington Smelting & Refining	8-22-25	2— 1 oz.	3.00
	Jelke Co., John F.	11-16-25	4— $\frac{1}{4}$ oz.	5.00
			1— $\frac{1}{2}$ oz.	1.35
30	Jones Hollow Ware Co.	6- 1-25	1— 3 oz.	2.25
	Karpen Bros.	12-10-25	1— 1 oz.	2.00
	Lebanon Steel Foundry	11-17-25	3— 1 oz.	6.00
			3— 3 oz.	10.50
	Life Savers, Inc. (Part Shipped)	9-11-25	1— $\frac{1}{4}$ oz.	.90
	Locke Steel Chain Co.	9-18-25	1— 1 oz.	1.50
			1— 3 oz.	2.25
	Luna Tin Mfg. Co.	7-20-25	1— 1 oz.	1.50
	McCormick, Estate of Leander, J.	10-23-25	6— 1 oz.	12.00
	McLachlan & Co., H.	6- 1-25	6— $\frac{1}{4}$ oz.	5.40
	Maas & Waldstein	3-27-25	2— 3 oz.	4.50
	Manz Corporation (Part shipped)	12-23-25	7— 6 oz.	38.50
	Metropolitan Electric Mfg. Co.	8- 7-25	2— 1 oz.	3.00
40	Michelin Tire Co.	12-15-25	6— 1 oz.	12.00

Affidavit of William A. Cawley.

Company	Ordered	Quantity	Cost.	
Miller & Sons, Inc. I.	8- 4-25	1— $\frac{1}{8}$ oz.	1.25	
Newark Tube Company	9-28-25	2— 1 oz.	3.00	
N. Y. Revolving Portable Elevator	6- 2-25	1— $\frac{1}{4}$ oz.	.90	
		1— $\frac{1}{8}$ oz.	.85	
		1— $\frac{1}{16}$ oz.	.75	
N. Y. Steam Corp.	7-28-25	2— 1 oz.	3.00	
		1— 3 oz.	2.25	
N. Y. Times	7-16-25	3— 3 oz.	12.75	
		3— 6 oz.	19.50	
Nugent Steel Castings Co.	12-17-25	6— 1 oz.	12.00	10
Parry, Samuel R.	6- 3-25	4— $\frac{1}{8}$ oz.	3.40	
Pheoll Mfg. Co.	12-30-25	2— 6 oz.	15.00	
Pinco Papers	10-16-25	6— 3 oz.	21.00	
Pines Waterfront Co.	11-20-25	2— $\frac{1}{2}$ oz.	2.70	
Pottstown Paper Box Co.	12- 4-25	2— $\frac{1}{2}$ oz.	2.70	
Public Service Elec. & Gas Co.	4-11-25	6— $\frac{1}{8}$ oz.	7.50	
Reading Steel Casting Co. Inc.	11-10-25	3— 3 oz.	10.50	
		3— 1 oz.	6.00	
Rochester Button Co.	7- 2-25	6— 1 oz.	9.00	
		6— $\frac{1}{2}$ oz.	6.00	
Rome Mfg. Co.	9-29-25	1— $\frac{1}{4}$ oz.	.90	
		1— $\frac{1}{2}$ oz.	1.00	
		1— 1 oz.	1.50	
Ruesch Machine Co.	9-23-25	2— 1 oz.	3.00	
Sayre & Fisher Co.	12- 9-25	6— 3 oz.	21.00	
Sheffield Farms Co. Inc.	9-15-125	1— 3 oz.	2.25	20
		1— 1 oz.	1.50	
Standard Oil Co. (N. J.) (Part shipped)	12-19-25	32— 3 oz.	176.00	
Smith-Edwards Machine Shop	10-20-25	3— $\frac{1}{2}$ oz.	4.05	
		3— 1 oz.	6.00	
Torrington Mfg. Co.	6- 1-25	1— $\frac{1}{4}$ oz.	1.50	
Underwood Typewriter Co. Inc.	9-17-25	2— 1 oz.	3.00	
United Piece Dye Works	9- 8-25	1— 3 oz.	1.50	
United States Metals Refining Co.	12-31-25	1— 6 oz.	5.50	
		1— 3 oz.	3.50	
Universal Shops	6-23-25	12— $\frac{1}{2}$ oz.	11.00	
Utica Willowvale Bleach. Co.	10- 1-25	3— 3 oz.	6.75	
Warner, Inc.	12- 7-25	6— $\frac{1}{2}$ oz.	8.10	
Yale Electric Corp.	7-23-25	1— $\frac{1}{2}$ oz.	1.00	
		1— 1 oz.	1.50	30
City of Yonkers, Dept. of Public Works	7-21-25	2— $\frac{1}{4}$ oz.	1.80	

The total of the foregoing orders is the sum of \$916.20.

The above-mentioned item awaiting the company at the office of the American Railway Express Co. will be required to, and is sufficient for the filling of such of the aforesaid orders as call for one-ounce cups. All other sizes of cups can be assembled as soon as blue prints

Affidavit of William A. Cawley.

for the latch on the cup are furnished to Barnhart Bros. & Spindler, who have the dies for the stamping out of the various size cups. As soon as the blue prints of this latch are furnished, not only can the company at once proceed to make on a quantity basis, the three-ounce cups, but also can speed up production on all the other sizes of cups, including the one-ounce cups.

10 As explained in my previous affidavit, Mr. Berry, as the engineer of the company, did not furnish the necessary blue prints, as he should have done months ago, and his failure to do so is what is delaying the company's production. Since the receivership proceeding has been started, Mr. Berry has been discharged and I have been taking general charge of the factory. What ought to be done immediately is for me to go to Chicago and have the Barnhart Bros. & Spindler engineers make the necessary blue prints for the latch, which would result in immediate delivery to this company, of complete parts ready for assembling by this company. I do not feel that I can do that, however, while this receivership proceeding is pending. My company, since as early as last September, has been trying to get these blue prints from Mr. Berry, but has been unsuccessful, and as soon as the receivership proceeding is finished we will proceed to get them elsewhere.

30 At the present time there are five mechanics employed, whose total weekly wages amount to 158.92, computed on a full time weekly basis. When the blue prints have been furnished, and as a result, the company is in receipt of the parts from Barnhart Bros. & Spindler, these five men can turn out weekly approximately 500 cups, the gross selling price of which would be about

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Affidavit of William A. Cawley.

\$1,000. At the present time the overhead of the company is as follows:

President (myself)	\$50 per week	
Stenographic and bookkeeping serv- ices	35 per week	
Stock and shipping clerk.....	25 per week	
Salaried salesmen	80 per week	10
	<hr/>	
	\$190 per week	

(Plus salesmen commissions for salesmen who work solely on a commission basis.)

This overhead compares with the weekly overhead before I took charge, on December 19, 1925, as follows: Week ending September 4, 1925, officers' salaries, etc., \$397, plus salesmen's salaries of \$155, making a total of \$552; week ending October 9, 1925, officers' salaries, etc., \$312, plus salesmen's salaries of \$155, making a total of \$467; week ending October 30, 1925, officers' salaries, etc., \$437, plus salesmen's salaries of \$155, making a total of \$592; week ending November 6, 1925, officers' salaries, etc., \$387, plus salesmen's salaries of \$155, making a total of \$542; week ending December 4, 1925, officers' salaries, etc., \$387, plus salesmen's salaries of \$155, making a total of \$542; week ending December 12, 1925, officers' salaries, etc., \$337, plus salesmen's salaries of \$155, making a total of \$492.

As I stated in my previous affidavit, I have never had any experience in selling stock, and in fact know nothing about it, and have had nothing whatever to do with the sale of stock in this matter. I am, and by profession have been, since 1904, a salesman, sales manager and sales organizer of manufactured products, and while I

Affidavit of William A. Cawley.

am not technically a factory man, I have through my experience learned a good deal about factory economy and the proper ratio between manufacturing cost and selling price, and also in regard to how the finances of a business ought to be handled.

10 As the complainant's original papers admit, I am thoroughly convinced that this company's product is an excellent one and a money-maker, and is in demand, and that this company can get all the orders it can possibly fill, as soon as it is in a position to fill them, and this has been proved by the orders received, commencing with the first month of my association with the concern. As I stated above, there are only two things lacking at the present time. First, the
20 blue prints mentioned, and, second, working capital. It is quite true that the company's credit is limited and that if it is to continue in business, more working capital must be had from some source. The only source that we have had to date, and the only source that we have now, is from the sale of the company's stock. I am convinced that \$5,000 would see the company through, because that would keep the company running until the returns from shipments started
30 to come in, and when that once started, this company would need no further working capital, and if expansion was necessary it could expand gradually. If we had more than \$5,000 we could get going on a larger scale more quickly, but even with \$5,000 we can work at a profit.

40 As the auditor's report shows, a considerable amount of money has been spent both in the sale of stock and in the factory, but that is not all lost by any means, because the company has received a great deal of favorable advertising,

Affidavit of William A. Cawley.

which, if the company continues, is going to result in orders, which will result in profits. Furthermore, it always takes time to get a manufacturing company up to the point where it can get itself organized to a manufacturing standpoint where it can work on a production basis. Every manufacturer finds that for several months, usually six months, it is all outgo and no income. The company's present readiness (when the blue prints are made) to manufacture on a production basis, is what the company has to show for the factory payroll and for direct factory expenses from the beginning to date. If the company is obliged to stop business at the present time, that would be practically a total loss to the company, and it is unlikely that after the expenses of the receivership were paid, that anything whatever would be forthcoming to stockholders. It seems to me, therefore, that the present stockholders can gain absolutely nothing by having it terminated, because that will end all their hopes of realizing anything, and if the company could, by means of the sale of its stock in the future, be put in possession of working capital, and if that stock can be sold, as I believe it can, and as Mr. Hoshor tells me it can and will be, I am absolutely convinced that the company will prove a source of profit to its stockholders. I am so convinced, and have been, that the company's prospects are good, that I am accepting at the present a salary of \$50 per week, when I could go out elsewhere and make several times that amount.

Counsel representing the company in this matter, and counsel representing Mr. Hoshor separately, have both advised that the close relationship existing between the company and its

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Affidavit of William A. Cawley.

10 brokers, by reason of the brokers' controlling ownership of the stock of the company, renders it inadvisable that the brokers should have the degree of authority which under their contract they have, regarding the subjecting of the company to obligations incident to the sale of stock, and also that all money received from the sale of stock ought to be paid into the company's treasury direct, in the form received, and that the disbursements ought to be made out of the company's treasury by its proper officers, and that all checks of the company ought to be signed by the Treasurer and countersigned by the President (which is now in fact being done).

20 There are no suits pending or threatened, and of the bills of \$1,308.93 above mentioned (excluding the funded amount due on the purchase price of the machinery and equipment), there is no pressing need for the salary to be paid, as those entitled thereto are willing to wait. The \$309 owing to the American Machinist, represents advertising, and arrangements can be made to have this payable in installments; omitting, therefore, the items of \$595 and \$309, totaling \$904, leaves only \$404.93 of bills which are required to be paid immediately. The company, 30 as of January 19, 1926, had in the bank \$874, representing in part, collected, and in part, uncollected, funds. It also has bills receivable of \$447.53, making a total of cash and receivables of \$1,321.53, as against all of the aforesaid unfunded liabilities of \$1,308.93. The amount of cash mentioned above does not include the cash in the National Newark and Essex Banking Company, which is sufficient to cover the outstanding checks drawn thereon and held by Mr. Welch and the others mentioned in the bill of complaint, 40

Affidavit of William A. Cawley.

unless they have already been paid. In any event, if all the checks drawn by the company on that bank are presented and paid, there will still be a balance to the credit of the company in that bank of \$10-odd.

The auditor's report shows, among others, the following tangible assets:

Furniture and Fixtures	398.00	
Machinery and Equipment	10,665.11	
Finished Goods and Material	2,360.43	
Lease Deposit	500.00	
Telephone Deposit (less charges accrued from January 1, 1926, of about \$10)	190.00	
Electric and Gas Deposit (less charges accrued from January 1, 1926, of about \$10)	80.00	20
	\$14,193.54	

Inasmuch as I have listed the balance of the unpaid purchase price of the machinery and equipment among the company's liabilities as above, it should be added to the aforesaid assets, as the \$10,665.11 represents only what has been paid on the machinery and equipment to date..... \$1,100.00 30

The audit shows that the Hoshor-Presby & Co., Inc., owes this company the difference between \$11,178 and \$3,500, which equals 7,678.00

The audit shows that stock to the extent of \$76,100.50 was accepted by the brokers from purchasers of the company's stock, in lieu of cash, and that the stock so accepted was sold 40

Affidavit of William A. Cawley.

(with the exception of certain Lopez Units valued at \$700) by the brokers for \$54,481.23, or at a loss of (\$76,100.50 less \$700 equals \$75,400.50, less \$54,481.23, equals) 20,919.27

10 Under their contract with this company, the brokers had a right to accept other stock in lieu of cash upon the approval of this company. I have not as yet had time to look through the company's records and see whether, before I became President, these transactions were accepted and approved by the company or not. If not, I am advised that this sum may constitute an additional asset to this company. (Asset dependent upon question of law, as brought forth above \$20,919.27.)

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Total\$28,597.27

Obviously, the company is, beyond question, solvent and, as I have said before, its only real difficulty is the present need of working capital to the extent of about \$5,000.

30 I have seen the restraining order which restrains the company from "taking and/or removing any of the assets, property and estate of the said defendant corporation within the State, out of this State," and I was present with counsel of the company when he called the attention of the court to the fact that if read strictly, it would prevent the company from doing business in the regular way and from paying its bills, and the court replied that it was not to be

40 construed as stopping the company from trans-

Affidavit of William A. Cawley.

acting its business, in the regular way, and acting on my understanding of the court's interpretation of this order, I am, therefore, going to pay the American Railway Express Co. the \$315 to take up the shipment, otherwise it will be returned to Chicago, and it will then be difficult for the company to get this very necessary material when it does want it. Incidentally, it is needed immediately to keep the men busy and to fill the orders for the one-ounce cups. 10

W. A. CAWLEY.

Sworn and subscribed to before me
this 20th day of January, A. D. 1926.

HUBERT J. HARRINGTON,
Attorney at Law of New Jersey. 20

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Affidavit of James J. Hastings.

a liability of the company, and the asset item of \$10,665.11 should be increased by the same amount.

I find that the Hoshor, Presby Co. is indebted to the Berry Automatic Lubricators Corporation, as per Item 5 in my report, in the sum of \$11,178, less advances made by them during January (which I find to be to the date hereof the sum of \$4,062.50), listed in my report as approximately \$3,500, the exact figures of that item not having been known at the time of the making of my report, owing to the shortness of time. 10

As indicated by my report, Item 3, there is an item of \$9,035.27 with which I have credited Hoshor, Presby & Co., Inc., which that firm advises me should originally have been properly charged to the Berry Automatic Lubricators Corporation, but was not so posted on their books. I do not question the propriety of any of the items comprising the \$9,035.27 except the item of \$4,755.20 for "legal expense." This seems to me to be rather a large amount, in view of the fact that the other items for legal expense of \$3,222.08 (see Item 3 of my report), and the further item of \$1,000 "patent expense" (see Item 4 of my report), are shown. 20 30

Not having available the date as to the services for which the sums were paid, I cannot express any opinion in regard to the propriety thereof, but suggest that before being allowed as a credit to Hoshor, Presby & Co., Inc., the nature and extent of the services for which these sums were paid be furnished and passed upon.

Reference to Item 2 of my report will show that certain stock units were accepted by Hoshor, Presby & Co., Inc., as part payment of the pur- 40

Affidavit of James J. Hastings.

chase price of the Berry Automatic Lubricators Corporation stock, and that the stock so taken in exchange was taken at the total price or value of \$76,100.50. There are so-called Lopez Units which Hoshor, Presby & Co., Inc., hold, and which belong to the Berry Automatic Lubricators Corporation, of a value of \$700, which are not yet sold. Deducting the \$700 from the \$76,100.50 leaves the sum of \$75,400.50. This stock was resold by Hoshor, Presby & Co., Inc., for the sum of \$54,481.23, so that the acceptance of this stock in lieu of cash resulted in a loss to someone of \$20,919.27. Whether this loss is properly chargeable to Hoshor, Presby & Co., Inc., or to the Berry Automatic Lubricators Corporation is a question which involves to a certain extent a question of law, and which I do not feel competent to answer. I am convinced that I have charged Hoshor, Presby & Co., Inc., with all the stock which has been sold and all of the items of disbursement which I have shown in my report, made either by Hoshor, Presby & Co., Inc., or Berry Automatic Lubricators Corporation, have been substantiated and supported by proper vouchers, and I am satisfied that these expenditures have actually been made, and I am satisfied that my report accurately reflects all moneys received and/or disbursed by either Hoshor, Presby & Co., Inc., and/or the Berry Automatic Lubricators Corporation.

By arrangement of counsel of the defendant corporation and of the complainant, the complainant's auditor, Hyman Besser, has examined all of my work sheets from which I prepared my final report, and also the draft of my final report, which work sheets and final draft to my knowledge he did examine. Mr. Besser was

Affidavit of John C. Hoshor.

paid their claims mentioned in the Amended Bill and Affidavits. As has been explained, checks which were given by the defendant company and protested were drawn against uncollected funds, checks for which had been deposited but not collected by the bank.

10 The Berry Automatic Lubricators Company was organized by Mr. Berry and myself for the purpose of manufacturing and marketing this device, which has a very large value and great merit. It was considered that fifty thousand (\$50,000) dollars would be necessary to place the company in a position to assemble and ship the product of the company, parts of which are being manufactured in or near Chicago.

20 It was agreed between Mr. Berry and myself that I should have three-fourths (3/4) of the authorized capital stock issued as my interest in the company, and that in order to raise said sum of fifty thousand (\$50,000) dollars for the purpose aforesaid he would donate from his one-fourth (1/4) of the stock fifty thousand (50,000) shares for sale.

30 In order to market the stock of a new corporation, no matter how meritorious its product, the market must be created by advertisements, personal solicitations through sales, and the giving of samples, placing sample orders, and other familiar methods, all of which involve a very considerable expense.

The cost of the sale of the first shares is the most expensive, and when the market has been created the cost is less.

40 I have been engaged in the brokerage business in the City of New York for six years. I do not consider the cost of the sale of the stock of the

Affidavit of John C. Hoshor.

defendant company to have been excessive, and in my opinion the remaining stock can be more readily sold at a very much less cost, because of the advertising and missionary work that had already been accomplished.

It is true that I have been largely instrumental in founding and maintaining the defendant company, that I am deeply interested in it and have implicit faith in the success of the company, but it is untrue that the remaining directors of the company are under my directions or perform my will. On the contrary, they are independent and act according to their own dictates, for the benefit of the defendant company. 10

I am president of the Hoshor-Presby Co., Inc., which is engaged in stock promotion in New York City, and have had charge of the stock-selling campaign. 20

It is true that the defendant company entered into a contract with our brokerage company for the sale of stock, and that I signed the agreement as president of both companies. That was done on the advice of our New York attorneys, and I was assured that under New York laws that is not a subject of criticism, and I will state here that if it is now considered that the contract entered into between the defendant company and Hoshor-Mantayne Company, now Hoshor-Presby Company, Inc., is against the best interests of the defendant company, Hoshor-Presby Company will consent to its cancellation. 30

I admit that I promoted the sale of the stock of the defendant company in every legitimate way. That we stated to prospective purchasers of stock that the company owned the patent rights to the lubricator cups and manufactured said device, for which it had many orders; that 40

Affidavit of John C. Hoshor.

10 it required money for the equipment of its plant and capital; that it owned patent rights in various foreign countries; that the defendant company's business was expected to operate at a profit, which might result in a dividend of 20 per centum; that the defendant company had orders from leading manufacturers, and that the proceeds of the sale of stock would be used as a working capital for the manufacturing of the product, but except as herein stated the allegations of the Amended Bill of Complaint and Affidavits with respect to such representation are denied.

The report of the accountant will show just what shares of stock have been sold and the prices at which same had been sold.

20 I deny that representations made were false, or that I know them to be false; I am now informed that certain orders which Christopher H. Berry represented to me had been received were not in his possession, but if that is the case there are many orders which have taken the place of those which are missing.

The exact amount expended for machinery and equipment will appear in the statement of the accountant, above referred to.

30 In a former affidavit in my answer I stated that thirty thousand (\$30,000) dollars had been spent in machinery and equipment. That was the figure given to me by the bookkeeper, and I have since found out that it contained other items which are particularly specified by the accountant's statement furnished to the Court (see page 3, subdivision A).

40 My statement was made relying upon the information furnished me by the bookkeeper, who in making the statement to me included the items

Affidavit of John C. Hoshor.

assembled by the accountant, showing total expenditures of about thirty-two thousand (\$32,000) dollars.

I deny that the corporation is insolvent in any aspect. Its assets far exceed its liabilities, as will appear by the statement of accountant submitted to the Court, and the affidavit of William A. Cawley in this cause. 10

It is true that the company has not been able to as yet pay its running expenses out of its earnings, but that is true of every company which begins to do business up until the time when the point is reached that the earnings equal or exceed the overhead expenses.

It must be remembered that this company has been running but seven months. That seven months ago it began without a dollar and nothing but a patent pending and a few sample grease cups. 20

Complaint is made in the amended bill that the proceeds of sale of stock is not being turned into the treasury of the defendant corporation. It will appear from the statement of the company that all of the proceeds of sale in excess of the expense of selling stock have been turned over to the corporation, or expended for its benefit, with the exception of seventy-five hundred (\$7,500.00) dollars. Part of this has already been paid, and the remainder will be turned over in the ordinary course of business. 30

The cost of printing advertising literature, stock sales and commissions are proper charges against the defendant company, and were properly deducted from the amount paid to the defendant company.

I have received no salary from the defendant company since its organization. 40

Affidavit of John C. Hoshor.

I deny that the defendant corporation has sustained deficit in its seven months' operation. All of the money which has been spent was well spent in advertising the product of the company and its organization and development.

10 I deny that any member of the general public has been defrauded through the sale of the stock of the defendant company, or that intervention of the Court is necessary. This company has reached a point where it will shortly be able to be operated at a profit. If it is stopped at this point, or a receiver appointed, such proceedings cannot but fail to bring a loss upon the stockholders.

20 The assets of the company are not subject to any judgment on execution, so far as I have been able to learn.

It is untrue that I moved or caused to be removed any books from the office of the defendant corporation in New Jersey. When these proceedings were commenced it was learned that Mr. Berry was aiding the complainants, and since he alone had the keys to the New Jersey office it was thought wiser for the protection of the books that they be taken to New York. They were returned the following day and are now in
30 the possession of Mr. Cawley in the New Jersey office.

I have not attempted to, and have no intention of attempting to remove any of the assets out of the State of New Jersey or beyond the jurisdiction of the Court.

In my opinion the entire difficulty with the operation of this company has been through the actions of Mr. Berry, who, either through incompetency or design, or perhaps both, has mis-
40 managed the affairs of the manufacturing end

Schedule A.

of the company that we have been unable to turn out the product to meet the orders which we had received, and we have thus lost to some extent the confidence of prospective customers.

Attention is called to the fact that under the management of Mr. Cawley, with a much smaller force of men and much less overhead, a far greater number of grease cups are being turned out, and Mr. Cawley is able to keep the good will of those who have given the company orders. 10

Shipments are being made continually and the prospects of the company are improving every day.

JOHN C. HOSHOR.

Signed in my presence and
sworn to before me this
20th day of January, A.
D. 1926. 20

JOHN B. BROWN,
Master in Chancery of New Jersey.

SCHEDULE "A."

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January 18, 1926.

Mr. Norbury C. Murray,
c/o Burnett, Sorg, Murray & Duncan,
810 Broad Street, Newark, N. J.

Dear Sir:

I have examined the Berry Automatic Lubricator Company accounts on the books of Hoshor, Presby & Co. and the Berry Automatic Lubricator Company check books to December 31, 40

Schedule A.

1925, for the purpose of determining the following:

	1.	Q.	The amount of stock sold by the Berry Automatic Lubricator Company?		
	A.		2,383 shares @ \$1.50	\$	3,574.50
			100 shares @ 4.00		400.00
			24,467½ shares @ 5.00		122,337.50
			131 shares @ 7.00		861.00
			1,579 shares @ 7.50		11,842.50
10			Total Sale Price		<u>\$139,015.50</u>
	2.	Q.	The amount received for stock sold?		
	A.		Cash	\$	62,915.00
			Stock taken in exchange as follows:		
			American Units	\$74,595.50	
			Ford Unit	650.00	
			Lopez Units	700.00	
			Bonus Stock	155.00	
				<u>\$76,100.50</u>	
20			The above stock was sold (with the exception of the Lopez Units) by Hoshor, Presby & Company for the account of the Berry Automatic Lubricator Company for — cash		
					<u>54,481.23</u>
			Total cash received from sale of stock and to be accounted for		
					<u>\$117,396.23</u>
	3.	Q.	The expenditures made by Hoshor, Presby & Company for the account of the Berry Automatic Lubricator Company?		
	A.		Berry Acct.	Additional	Total
			Furniture & Fixtures	.... 328.00	328.00
			Seal-Incorporation fees	196.00	196.00
			Photograph	21.85	21.85
30			Boyd Service—Lists	498.55	498.55
			Stamps for mailing	2,089.04	2,089.04
			Stationery & Multigraphing	570.02	570.02
			Rent	152.50 942.58	1,095.08
			Telegraph & Telephone	141.31 1,256.79	1,398.10
			Cartage	3.75	3.75
			Advertising	825.65	825.65
			Commission of Stock Salesmen	21,805.40	21,805.40
			Traveling expenses of Salesmen	3,740.26	3,740.26
			Legal Expense	3,222.08 4,755.20	7,977.28
			Printing	2,205.75	2,205.75
			Protest Fees	2.62	2.62
			General	1,076.73 467.29	1,544.02
40			Total stock		
			Selling Expense	<u>\$36,551.51</u>	<u>\$7,749.86</u>
					<u>\$44,301.37</u>

Schedule A.

	Berry Acct.	Additional	Total	
<i>Manufacturing Expense:</i>				
Manufacturing Dies	2,286.89	....	2,286.89	
Salaries of Executives & Lubricator Salesmen	4,704.50	1,285.41	5,989.91	
	<u>6,991.39</u>	<u>1,285.41</u>	<u>8,276.80</u>	
Cash advances to Berry Automatic Lubricator Company				
	3,097.77	....	3,097.77	10
	<u>\$46,640.67</u>	<u>\$9,035.27</u>	<u>\$55,675.94</u>	

The \$9,035.27 included above represents journal entries put on the books of Hoshor, Presby & Company as of this date to correct errors in distribution of expenses discovered by the officials of Hoshor, Presby & Company. These items represent actual expenditures which I am advised should have been charged to the Berry Automatic Lubricators Company originally.

4. Q. The expenditures made by the Berry Automatic Lubricator Company?

A. Machinery & Equipment	\$10,665.11	
Furniture & Fixtures	398.95	
Telephone Deposit	200.00	
Electric & Gas Deposit	90.00	
Lease Deposit	500.00	20
Finished Goods & Raw Materials	2,360.48	
Labor—Direct	2,607.35	
Salaries—Executive	7,775.20	
Salaries—Office	908.00	
Salaries—Salesmen	1,655.83	
Traveling Salesmen	464.12	
Commissions to Lubricator Salesmen	150.00	
Rent	1,151.68	
Telephone	123.24	
Advertising	1,259.10	
General	1,483.58	
	<u>\$31,792.64</u>	
<i>Other Expenses:</i>		
Organization Expense	342.00	30
Patent Expense	1,000.00	
	<u>\$1,342.00</u>	
<i>Stock selling expense paid:</i>		
Commission to Salesmen	2,710.50	
United Corporation of America	301.00	
	<u>\$3,011.50</u>	
<i>Total Net Expenditures by Berry Automatic Lubricator Company</i>		
	<u>\$36,146.14</u>	

Schedule A.

5. Q. The amount owing from Hoshor, Presby & Company to Berry Automatic Lubricator Company, as shown by the records examined?

A. Total Cash to be accounted for as per Question #2	\$117,396.23
Net Cash expenses by Hoshor, Presby & Company (Question #3)	\$55,675.94
Cash expended by Berry Automatic Lubricator Co. (Question #4)	36,146.14
Hoshor, Presby & Company 10% on selling price of stock	13,901.55
Balance in bank account of Berry Automatic Lubricator Co. at Dec. 31, 1925	494.60
	106,218.23
Due Berry Automatic Lubricator Company	\$ 11,178.00

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Hoshor, Presby & Company has advanced approximately \$3,500.00 during January, 1926.

The Berry Automatic Lubricator Company has also to receive the proceeds of the Lopez Units (value \$700) when sold.

Respectfully submitted,

JAMES J. HASTINGS,
Certified Public Accountant.

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*Order Appointing Statutory Receiver.***ORDER APPOINTING STATUTORY
RECEIVER.**

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin, *et al.*,
Complainant,

and

Berry Automatic Lubricators
Corporation,

Defendant.

On Bill, &c.
Order
Appointing
Statutory
Receiver.

10

This matter being opened to the Court by Samuel M. Hollander, solicitor for the complainant, Raymond J. Baldwin, and Israel B. Greene, counsel with said complainant and the intervening complainants herein, in the presence of Burnett, Sorg, Murray & Duncan, Esqs., solicitors for the Berry Automatic Lubricators Corporation, the defendant herein; and it appearing that by an order made in this cause on the 22nd day of December, 1925, the said defendant corporation was directed to show cause before the Chancellor at the Chancery Chambers, in the City of Newark, New Jersey, on the 29th day of December, 1925, why among other things an injunction should not issue and a receiver be appointed, according to the prayers of the original bill of complaint filed herein; and it appearing that a copy of the said bill of complaint and order to show cause made thereon were duly served within the time and as re-

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Order Appointing Statutory Receiver.

quired by said order to show cause on defendant corporation, and the matter having been duly continued from time to time to this date; and the Court having read and considered the original bill of complaint filed herein and the affidavits thereto annexed, the answer and answering affidavits filed by the defendant, the amended bill of complaint (filed by leave of the Court), and the affidavits and exhibits thereto annexed, the defendant's answer and answering affidavits thereto, and the other affidavits, proofs and testimony taken herein; and the Court having heard argument of counsel for said respective parties; and it appearing to the Court that the defendant corporation has become insolvent and is insolvent and is not about to resume its business in a short time hereafter with safety to the public and advantage to its stockholders, and that the prayers for an injunction and for the appointment of a receiver should be granted, it is on this 26th day of January, 1926, upon motion of counsel for complainants, ORDERED, ADJUDGED and DECREED,

1. That the Berry Automatic Lubricators Corporation, the defendant in this suit, has become and is insolvent and is not able to resume its business in a short time hereafter with safety to the public and advantage to its stockholders.

2. That an injunction issue against defendant corporation, according to the prayer of the bill of complaint, and that said corporation, its officers, servants and agents absolutely desist and refrain and they are hereby enjoined and restrained from exercising any of its privileges of franchises, and from collecting or receiving any debts or paying out, selling, assigning or

Order Appointing Statutory Receiver.

transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by this Court.

3. That Samuel I. Kessler of the City of Newark, County of Essex and State of New Jersey, be and is hereby appointed receiver for the creditors and stockholders of said defendant corporation with all the powers incident thereto, and that he do and perform all the duties imposed upon him and required by law, and especially by an Act entitled "An Act Concerning Corporations (Revision of 1896)" and the Acts supplementary thereto and amendatory thereof. 10

4. That the said receiver before he shall enter upon his duties, as such receiver, shall take the oath prescribed by law and give a bond to the Chancellor of the State of New Jersey in the sum of \$5,000.00, conditioned for the faithful performance of his duties, to be approved as to form and security thereof by any one of the Special Masters of this Court. 20

5. That the creditors and stockholders of defendant corporation show cause before this Court on the ~~21~~^{5th} day of February, 1926, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Chancery Chambers, Newark, New Jersey, why the said receiver should not be continued or why some other person should not be appointed receiver in his place, or with him as co-receiver, and that a notice of this order, which need not be certified, be mailed by the solicitor for complainants to all creditors and stockholders of defendant corporation, at their last known post- 30

Order Appointing Statutory Receiver.

office addresses, within three days of the date hereof.

E. R. WALKER,
Chancellor.

Respectfully advised,

10 JOHN H. BACKES,
Vice-Chancellor.

A true copy.

ISRAEL B. GREENE,
Of Counsel with Complainants.

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Conclusions of Vice-Chancellor.

CONCLUSIONS OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

Raymond J. Baldwin,
Complainant,

and

The Berry Automatic Lubri-
cator Corporation, a cor-
poration, and John C.
Hoshor,
Defendants.

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Conclusions.

1. Chancery has not jurisdiction to regulate the internal affairs of a foreign corporation. 20

2. Chancery has jurisdiction to appoint a receiver of the property, in this State, of an insolvent foreign corporation doing business in this State.

For complainant, Samuel M. Hollander and Israel B. Greene.

For defendants, Burnett, Sorg, Murray & Duncan (Mr. Murray). 30

BACKES, V. C.

The defendant is a Delaware corporation. The complainants, stockholders and creditors filed this bill (amended) to enjoin it from exercising its corporate franchise in this State, and for a receiver.

The company was formed in May, 1925, by Christopher H. Berry, an inventor, and John C. Hoshor, a New York stock broker, using dummy 40

Conclusions of Vice-Chancellor.

shareholders, with an authorized capital stock of \$1,000,000, divided into 1,000,000 shares at a dollar a share. Berry had invented a grease cup, and had a patent pending, and for a license to manufacture the cup all the authorized capital stock of the company was issued to him; that is, the
10 license to manufacture the cup was capitalized for a million dollars. Seven hundred and fifty thousand of the shares were immediately handed over to Hoshor and 50,000 shares were returned to the treasury of the company for sale to the public. The corporation then entered into a contract with Hoshor's stock brokerage concern, Hoshor, Montayne & Co., later changed to Hoshor, Presby & Co., to sell the company's fifty thousand shares of treasury stock, the company to pay all expenses and ten per cent. commission.
20 The stock-floating campaign was then launched. The public was circularized with the usual alluring literature, guardedly phrased but false in spirit and fact, in which the Berry Automatic Lubricator Company was represented as an active manufacturer and distributor of lubricators; that its customers were some of the largest manufacturers in the nation and that there were reasonable prospects of a twenty per cent. dividend in 1926; all designed to intrigue their victims into the belief that the company was in
30 prosperous and successful operation. Crafty salesmen were sent into the field and with glib tongue and false heart, and by wicked and false pretenses, swindled them of their money and securities—securities paying a lower dividend. The promise of a twenty per cent. dividend was the bait dangled at the end of their line of misrepresentations. After 2,383 shares had been disposed of at \$1.50 a share the promoters, evi-
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Conclusions of Vice-Chancellor.

dently feeling that they were selling them too cheap, and that \$5 and over could be as readily gotten, recapitalized the license at \$5,000,000, increased the authorized capital stock to that amount, and the shares to \$5 each, and thereafter 100 shares were sold at \$4 a share, 24,467 at \$5 per share, 131 at \$7 per share and 1,579 at \$7.50 per share, yielding a total of \$139,015.50. Of this sum, \$76,100.50 represents stock and securities taken in exchange and resold for \$54,481.23, leaving a net yield of \$117,396.23 in cash. Of this, over \$96,000—to be exact, \$96,293.69—has been eaten up by expenses, salaries, commissions, etc. A shop had been rented in Newark and second-hand machinery had been installed at a cost of \$11,000, on deferred payments, but not a wheel was turned nor a cup marketed for profit. Half a dozen or more mechanics made cups by hand, a few a day, in all a few hundred, which were sold or sent to large manufacturers as tryouts or samples. These were the much-advertised customers. It was sought to show that lack of cooperation between the stock brokerage and factory management was accountable for the failure of machine production on a larger scale, but the facts tend to show that the factory was a mere sham and pretense and that the grease cups functioned mainly in lubricating the sale of stock. It is not questioned that the invention has merit, but fixing its value and price at a million dollars of the capital stock of the company implies fraud at the outset, and later raising the face value of the issue to five million dollars demonstrates it, as well as the cupidity of the promoters. There is nothing left to show for the \$117,396.23 except some second-hand machinery, as yet unpaid

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Conclusions of Vice-Chancellor.

for, office furniture and stock on hand, all appraised at \$14,000; \$7,678 due from Hoshor, Presby & Co., which apparently is uncollectable, and a few dollars in bank. From this showing, and the figures are taken from the account furnished by Hoshor, Presby & Co., can it be
10 doubted that the corporation was manipulated solely as a stock-selling swindle, and that the scheme is only one of many by which the public is fleeced of a billion dollars annually, as statistics show?

It may be, as contended, that all the related misuses and abuses of the corporation, and of the public, are foreign to the jurisdiction of this Court in these proceedings, but it cannot be plausibly argued that they are not influential
20 in solving the issue of insolvency presented by the bill. Foreign corporations licensed to do business in this State are subject to the provisions of our corporation act only so far as they are applicable. For the regulation of their internal affairs the courts of the State of their creation must be resorted to. But when such companies are engaged in business in this State and have their property here, an injunction may
30 issue and a receiver be appointed, as in cases of domestic corporations, upon insolvency, actual or potential; and it is on this single ground and issue that the bill is entertained. The company never functioned in legitimate business. Its liquid assets have been dissipated. The company's factory is a liability. It has no business. It has orders, so it is claimed, for 385 cups from seventy-nine concerns, ranging in price from 90 cents to \$6 per cup, a total of \$916.20, mostly samples, and no funds to pay for labor or ma-
40 terial. It must buy for cash, and it has none.

Conclusions of Vice-Chancellor.

Its total debt is not large, only \$2,724.14, but it cannot pay. It has asked its creditors for an extension of time; with what result is not disclosed. Numerous checks, given in payment of bills, have, time and again, been dishonored, and some are still under protest and unpaid. These are Hoshor, Presby & Co.'s checks given in settlement of merchandise and wage accounts. They were the company's fiscal agents. It is said that the company has \$874 in bank and \$447.53 bills receivable. If that be so, why are not the protested checks paid? It is urged in the affidavits and argument that \$5,000 would set this \$5,000,000 company on its feet, and that to enjoin it and to appoint a receiver would be unjust and disastrous to the stockholders. Hoshor, Presby & Co. owe the company \$7,678, remnant of the stock sales. Why that is not used to "salvage" the concern is obvious. The appeal for leave to further exploit the public spells its own answer of bankruptcy. The company is hopelessly insolvent and, in the language of our statute, "is not able to resume its business in a short time with safety to the public and advantage to the stockholders."

A receiver will be appointed.

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*Petition of Appeal.***PETITION OF APPEAL.****NEW JERSEY COURT OF ERRORS AND
APPEALS.**

Between

Berry Automatic Lubricators
Corporation,
Appellant-Defendant,
and

Raymond J. Baldwin, *et al.*,
Respondents-Complainants.

On Bill, &c.
Petition of
Appeal.

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To the Honorable the Court of Errors and Ap-
peals in the last resort in all causes:

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The petition of Berry Automatic Lubricators Corporation, the appellant in the above-stated cause, respectfully shows that your petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date January 26, 1926, in a cause wherein the said Raymond J. Baldwin and others were complainants and Berry Automatic Lubricators Corpora-
tion was defendant, in this respect, to wit: that the said order adjudges that the Berry Automatic Lubricators Corporation has become and is insolvent and is not able to resume its business in a short time thereafter, with safety to the public and advantage to its stockholders; that an injunction issue against the said corporation according to the prayer of the bill of complaint, and that said corporation, its officers, servants and agents, absolutely desist and re-

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Petition of Appeal.

frain, and they are hereby enjoined and re-
frained from exercising any of its privileges or
franchises granted by the statutes of this State,
and from collecting or receiving any debts or
paying out, selling, assigning or transferring
any of its estate, moneys, funds, lands, tenements
10 or effects except to a receiver appointed by this
Court, and appointing Samuel I. Kessler re-
ceiver for the creditors and stockholders of said
corporation with all the powers incident thereto,
and that he do and perform all the duties im-
posed upon him and required by law, and espe-
cially of an act entitled "An Act Concerning
Corporations (Revision of 1896)," and the acts
supplementary thereto and amendatory thereof,
and requiring the said receiver, before he shall
20 enter upon his duties as such, to take the oath
prescribed by law, and give a bond to the Chan-
cellor, conditioned for the faithful performance
of his duties, and requiring the creditors and
stockholders of the said corporation to show
cause before the Court on the day and hour
therein named, why the said receiver should not
be continued, or why some other person should
not be appointed in his place and stead, and
directing that a notice of said order be mailed
30 to all creditors and stockholders of defendant
corporation at their last known post office ad-
dresses, within three days of the date thereof.

And your petitioner humbly appeals from that
part of said order of the Chancellor which orders
as aforesaid, on the ground that the same is
erroneous for that no such order should have
been made, and the order to show cause whereon
the same was founded should have been dis-
charged.

Petition of Appeal.

Your petitioner therefore prays that the said order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

McCARTER & ENGLISH, 10
Solicitors and of Counsel with Appellant.

Endorsed: "Filed Apr. 1, 1926. Thomas F. Martin, Clerk."

Service of a copy of the within petition of appeal is hereby acknowledged this 6th day of April, 1926.

ISRAEL B. GREENE, 20
Of Counsel with Respondents.

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Order Appointing Statutory Receiver.

Upon petition, James P. Walsh Company, on December 29, 1925, was admitted as a party complainant, and upon petitions the Albert Company and Samuel Portnow were likewise admitted as parties complainant, by orders dated January 9, 1926.

Answer to petition of appeal duly filed. 10

**ORDER APPOINTING STATUTORY
RECEIVER.**

Filed January 26, 1926.

IN CHANCERY OF NEW JERSEY.

Between

RAYMOND J. BALDWIN, *et al.*,
Complainant,

and

BERRY AUTOMATIC LUBRICATORS
CORPORATION,

Defendant.

*On Bill, etc.
Order
Appointing
Statutory
Receiver.*

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This matter being opened to the Court by Samuel M. Hollander, solicitor for the complainant, Raymond J. Baldwin, and Israel B. Greene, counsel with said complainant and the intervening complainants herein, in the presence of Burnett, Sorg, Murray & Duncan, Esqs., solicitors for the Berry Automatic Lubricators Corporation, the defendant herein; and it appearing that by an order made in this cause on the 22nd day of December, 1925, the said defendant corporation was directed to show cause before the

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Order Appointing Statutory Receiver.

Chancellor at the Chancery Chambers, in the City of Newark, New Jersey, on the 29th day of December, 1925, why among other things an injunction should not issue and a receiver be appointed, according to the prayers of the original bill of complaint filed herein; and it appearing that a copy of the said bill of complaint and order to show cause made thereon were duly served within the time and as required by said order to show cause on defendant corporation, and the matter having been duly continued from time to time to this date; and the Court having read and considered the original bill of complaint filed herein and the affidavits thereto annexed, the answer and answering affidavits filed by the defendant, the amended bill of complaint (filed by leave of the Court) and the affidavits and exhibits thereto annexed, the defendant's answer and answering affidavits thereto, and the other affidavits, proofs and testimony taken herein; and the Court having heard argument of counsel for said respective parties; and it appearing to the Court that the defendant corporation has become insolvent and is insolvent and is not about to resume its business in a short time hereafter with safety to the public and advantage to its stockholders and that the prayers for an injunction and for the appointment of a receiver should be granted, it is on this 26th day of January, 1926, upon motion of counsel for complainants, ORDERED, ADJUDGED and DECREED,

1. That the Berry Automatic Lubricators Corporation, the defendant in this suit, has become and is insolvent and is not able to resume its business in a short time hereafter with safety to the public and advantage to its stockholders.

Order Appointing Statutory Receiver.

2. That an injunction issue against defendant corporation, according to the prayer of the bill of complaint and that said corporation, its officers, servants and agents absolutely desist and refrain and they are hereby enjoined and restrained from exercising any of its privileges of franchises, granted by the statutes of this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects except to a receiver appointed by this Court. 10

3. That Samuel J. Kessler, Esq., of the City of Newark, County of Essex and State of New Jersey, be and is hereby appointed receiver for the creditors and stockholders of said defendant corporation with all the powers incident thereto and that he do perform all the duties imposed upon him and required by law and especially by an act entitled, "An Act Concerning Corporations (Revision of 1896)," and the acts supplementary thereto and amendatory thereof. 20

4. That the said receiver before he shall enter upon his duties, as such receiver, shall take the oath prescribed by law and give a bond to the Chancellor of the State of New Jersey in the sum of \$5,000 conditioned for the faithful performance of his duties to be approved as to form and security thereof by any one of the Special Masters of this Court. 30

5. That the creditors and stockholders of defendant corporation show cause before this Court on the 2nd day of February, 1926, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, at the Chancery Chambers, Newark, New Jersey, why the said 40

Order Appointing Statutory Receiver.

receiver should not be continued or why some other person should not be appointed receiver in his place or with him as co-receiver and that a notice of this order, which need not be certified, be mailed by the solicitor for complainants to all creditors and stockholders of defendant corporation, at their last known post office addresses within three days of the date hereof.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

A true copy.

20 THOMAS BARBER,
Clerk.

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Affidavit of Hyman Besser.

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between

RAYMOND J. BALDWIN,
Complainant,

and

BERRY AUTOMATIC LUBRICATORS
CORPORATION, a corporation,
Defendant.

On Bill, etc.

10

Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

HYMAN BESSER, being duly sworn according to law, on his oath deposes and says: 20

1. I am a duly licensed and practicing certified public accountant of New Jersey and maintain my office at 790 Broad street, Newark, New Jersey.

2. On January 16th and January 18th, 1926, at the request of complainant's solicitor, I conferred with James J. Hastings, the certified public accountant employed by the defendant corporation, to prepare financial statement of the defendant's financial condition. On January 16th I met Mr. Hastings at the plant of the defendant corporation in the City of Newark, and requested him to permit me to make an inspection of the company's books. Mr. Hastings informed me that defendant corporation had no books, but that he was installing a set of books, which he was writing up. He permitted me to examine the sales records and his working sheets, which 40

Affidavit of Hyman Besser.

contained a complete analysis of the financial operations of the company. These working sheets disclose that there has been sold stock amounting to \$139,015.50; that the proceeds of said stock was disbursed as follows: \$43,542.90 by Hoshor-Presby Company and \$36,146.14 by the defendant corporation.

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By amount retained by Hoshor-Presby Co. for commissions on stock (10%) \$13,901.55. Total \$93,590.59, leaving a balance of \$45,424.91 to be accounted for.

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3. Mr. Hastings informed me that the Hoshor-Presby Co. claims to have accounted for the deficiency of \$45,424.91 by losses alleged to have been sustained in the following manner: A consideration portion of the stock was sold for part in cash and part by accepting on account of the purchase price stock in other corporations and other securities, and that in the liquidation of these stocks and securities, the Hoshor-Presby Co. sustained a loss of \$21,619.27, Mr. Hastings further stated that the Hoshor-Presby Co. claim a further credit of \$9,035.27 in respect of alleged expenses incurred for the Berry Company, which however, they were unable to support with vouchers or cancelled checks. Assuming that the Hoshor-Presby Company is entitled to the aforesaid credit, it would still be accountable for \$14,770.37 as of December 31, 1925. It also appears that since December 31, 1925, the Hoshor-Presby Company has advanced about \$3,500 to defendant corporation.

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4. I personally examined the sales records of the defendant corporation for the entire period of its existence, approximately seven months, and I find total shipments to customers

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Affidavit of Hyman Besser.

to have amounted to \$512.65, the largest sale amounting to \$51. I found also that there are orders on hand amounting to \$916.20. I found also the total disbursements made by the defendant corporation for machinery and equipment to amount to \$10,665.11. Mr. Hastings and I are in agreement as to the above figures.

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5. Defendant corporation has made no profits in its operation, but has been operating solely with the funds realized from the sale of stock, and it is operating at a continuous loss.

HYMAN BESSER.

Sworn and subscribed to before me
this 20th day of January, 1926.

DOROTHY A. DONNELLY,
Notary Public of N. J.

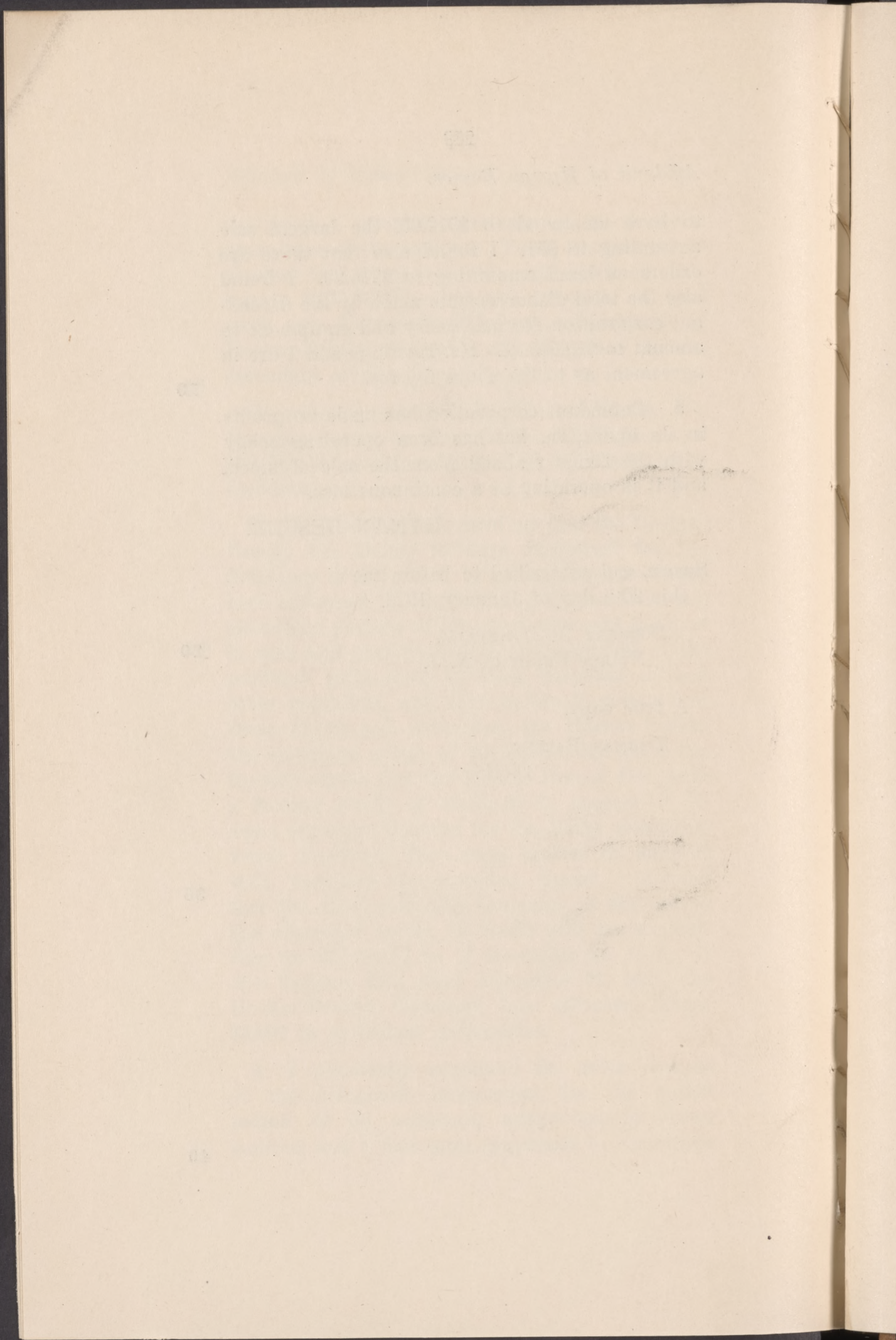
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A true copy.

THOMAS BARBER,
Clerk.

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New Jersey Court of Errors and Appeals

Between

BERRY AUTOMATIC LUBRICATORS CORPORATION,
Defendant-Appellant,

and

RAYMOND J. BALDWIN, *et als.*,
Complainants-Respondents.

*On Appeal
from
Chancery.*

*Sat Below:
WALKER, C.
BACKES, V.-C.*

BRIEF OF COMPLAINANTS— RESPONDENTS.

Statement.

The Berry Automatic Lubricators Corporation, a Delaware Corporation, authorized to do business, and having all its property in this State, appeals from a Decree in Chancery, advised by Vice-Chancellor Backes, adjudging it insolvent, appointing a receiver for its property, and restraining it from exercising its privileges and franchises in this State. The facts in the case are so ably and comprehensively summarized in the opinion of the learned Vice-Chancellor (Case, pp. 243-247) that we deem it unnecessary to repeat the same, nor to add an iota thereto.

Argument.

Counsel for the appellant, in his brief, concedes the power of the Court of Chancery, under the provisions of our Corporation Act, to appoint a receiver for an insolvent foreign corporation, sequester its property within the State for the benefit of creditors and stockholders, and enjoin it from exercising its franchises in

this State (Appellant's brief, page 6). And since the *insolvency* of the appellant, was the sole ground upon which the Court of Chancery assumed jurisdiction of this case (opinion, p. 246, ll. 31, 32), it is obvious that the meritorious question on this appeal is whether the Court's finding of insolvency was justified.

Notwithstanding that fact, however, counsel for the appellant has studiously avoided discussing this subject and, instead, has devoted eleven-twelfths of his brief to hypercritical objections touching the form, rather than the substance of the decree. The learned Vice-Chancellor, in vigorous language, adjudged that the corporation *was hopelessly insolvent*; found that it *never functioned in legitimate business*; that it was *manipulated* by Hoshor solely as a *stock-selling swindle*; and that the alleged *lubricator cup* was used largely to *lubricate the sale of the stock*. (Opinion, pp. 243-247.) None of these charges are discussed in the appellant's brief. Counsel for the appellant, however, dismisses the subject of insolvency by boldly asserting that "*a careful examination of the proofs demonstrates that the company was not shown to be insolvent at the time the order was made.*" It is to be observed that counsel for the appellant does not proclaim the solvency of the Company. He merely asserts that the defendant's insolvency was not proven, and then only, at the time the decree was made. The reasonable inference to be drawn from this declaration, is that, in truth, and, in fact, the Company *was insolvent*, but that the same was not established evidentially. If "*a careful analysis*" of the voluminous record would demonstrate the solvency of the Company, is it not strange, indeed, that the learned, astute, and experienced counsel for the

appellant has not assisted this Court with such an analysis?

Counsel for the appellant seems to make four specific criticisms of the decree in this case, and these we considered *seriatim*—

1. The first objection seems to be, that the Vice-Chancellor judicially determined that the prayers of the original and amended bills, for an injunction, and for the appointment of a receiver should be granted. The original bill prayed, among other things, for an injunction restraining the Company from exercising, *any* of its franchises, and from collecting or alienating any of its money and effects, etc., and for the appointment of a receiver according to the Statute (Case, p. 8). The prayers of the amended bill are similar to those in the original bill, except that the prayer for an injunction is confined to restraining the exercise of the franchises, rights and privileges granted to the Company by the State of New Jersey (Case, p. 162).

The *gravamen* of the appellant's contention seems to be that the recital in the decree "and it appearing to the Court that the defendant corporation has become insolvent * * * and that the prayers for an injunction and for the appointment of a receiver should be granted," is a judicial determination that the prayers for an injunction, and a receiver, as prayed for in the original and amended bills, should be granted. From this premise, it is argued that the decree seeks to affect the property and franchises of the Company beyond this State. On the face of it, the objection is hypercritical. The Court's statement "* * * that the prayers for an injunction and appointment of a receiver should be granted," is stated purely by way of recital

of the premises, and must be read in conjunction with the matters adjudicated in, and relief actually granted by the decree. It is not contended that the decree actually restrains the corporation from exercising its corporate franchises without the State; nor is it attempted to be shown that the corporation owned any property without the State, which has been interfered with by the decree.

2. The second objection seems to be that the decree restrained the appellant from the collection or alienation of its property, without the State of New Jersey. Counsel for the appellant asserts that the allegation in the 9th paragraph of the amended bill of complaint, that the corporation never had any assets in the State of Delaware and that all of its property has at all times been and is now located within this State, has not been proved. This is not so. Paragraph 9 of the answer to the amended bill of complaint (Case, p. 207) admits that the defendant corporation never had any property or assets in the State of Delaware, except its corporate franchise. And the record may be searched in vain for any evidence of any tangible or other property of the corporation without the State of New Jersey, except the worthless claim of \$7,678 due to the corporation from the Hoshor-Presby Company. Of course the *situs* of this claim, if it be considered an asset, is in this State. (). The suggestion that the corporation has an office in New York, is pure sophistry. The office referred to was the office of Hoshor, the stock promoter and manipulator.

3. It is next urged that the restraint upon the corporation "*from exercising any of its privileges and franchises granted by the Statutes*

of this State," is meaningless and ineffective. It is argued that it has never previously been contended that a Certificate of Authority to do business in this State is a franchise. If a Certificate of Authority to a corporation to do business in a State is not a privilege or franchise, then, indeed, we do not know what is a privilege or franchise. The dictionary defines a privilege as "a peculiar advantage, right, immunity, a prerogative"; and a franchise as "a particular privilege or right granted by a sovereign * * * to an individual or to a corporation"; (Webster's Dictionary).

In a popular sense the word seems to be synonymous with right or privilege (Bouvier Law Dict.). At any rate, if, as is contended, this language is meaningless and ineffective, and doesn't restrain the appellant from doing business in this State, we fail to see how the appellant has been injured and why it should complain.

4. It is finally argued that the decree is an attempt to regulate the internal affairs of a foreign corporation. *Jackson v. Hooper*, 76 N. J. E. 592, is cited as authority for the proposition that it is incompetent for the Court of Chancery to regulate the internal affairs of a foreign corporation. Of course, this contention is frivolous. The jurisdiction of the Court of Chancery in the case at bar was predicated upon the sole ground of insolvency under the Statute. The power of Chancery to appoint a Receiver on that ground, cannot be denied. *Minchin v. Second National Bank*, 36 N. J. Eq. 436. *Albert v. Clarendon Land Investment & Agency Co.*, 53 N. J. Eq. 623; *Atwater v. Baskerville*, 89 N. J. Eq. 121, affirmed in 90 N. J. Eq. 275. That being so, it is unnecessary to discuss the question as to

whether the decree was an interference with the internal affairs of a foreign corporation. Strictly speaking, however, the power of Chancery to interfere with the internal affairs of a foreign corporation is not so much a matter of jurisdiction, as it is discretion in the exercise of jurisdiction. *Atwater v. Baskerville, supra*. The ordinary reasons and circumstances which deter a Court of Equity from interfering with the internal affairs of a foreign corporation, are not present in the case at bar, for, here all the assets, property and estate of the corporation are located within the State, and the Court can make its decree effective.

As was said by the Pennsylvania Supreme Court in a case analogous to the case at bar, *Cunliffe v. Consumers Association of America*, 124 Atl., page 501, at 504,

“It would be strange to say that the Courts of Pennsylvania have no jurisdiction to appoint a receiver for a corporation, where all of the assets, all of the business, all of the officers and directors and all of the books and records of the Corporation are in this State, merely because the Promoters of the Corporation for some purpose went to another State to have the Company incorporated.”

A careful reading of the record in this case, and the forceful and illuminating opinion of the learned Vice-Chancellor, considered in the light of the conduct of the appellant, both before and after the entry of the decree, is convincing, that the present appeal is but another “*appeal for leave to further exploit the public.*”

The decree should be affirmed.

Respectfully submitted,

ISRAEL B. GREENE,

Of Counsel with Complainants-Respondents.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

BERRY AUTOMATIC LUBRICA-
TORS CORPORATION,
Defendant-Appellant,

and

RAYMOND J. BALDWIN, *et als.*,
Complainants-Respondents.

*On Appeal
from
Chancery.*

MEMORANDUM FOR DEFENDANT- APPELLANT.

Statement of Facts.

The Berry Automatic Lubricators Corporation is a corporation of the State of Delaware, with a factory and office in Newark, New Jersey, and an office in the City of New York. The original complaint filed was a stockholder's bill against the company claiming that he had been fraudulently induced to purchase stock in the company by sales agents thereof, and more particularly by one John C. Hoshor of the City of New York; that the expenses, including commissions, attendant upon these sales, had so depleted the available capital of the company, which had always been small, that the company had been unable to meet a few of its obligations. The 26th paragraph of the original bill (page 7) read as follows:

"26. Your complainant charges that it is absolutely necessary for the preservation of the assets of the defendant, Berry Automatic Lubricators Corporation, that a receiver be forthwith appointed by this Honorable Court, pursuant to the statute, and that pending the hearing to be had on this

bill, that a receiver be appointed to preserve and protect said assets.”

The prayer of the original bill read as follows (page 8):

“1. That the said Berry Automatic Lubricators Corporation, a corporation of the State of Delaware, duly licensed to do business in the State of New Jersey, may without oath, full, true and perfect answer make to all and singular the matters and things hereinabove stated, and that it may set forth and discover the goods and chattels, rights and credits, moneys and effects of every kind and description, belonging to said corporation, that your complainant and other creditors and stockholders of the said company may be paid what is due them, and that the said company may be enjoined from exercising any of its franchises and from receiving any of its debts due to it, and from paying and transferring any of its moneys and effects, and from continuing its business, and that it may be decreed to be insolvent, and that a receiver may be appointed according to the form of the statute in such case made and provided, and that a temporary receiver may be appointed to take possession of the said assets pending the hearing to be had thereon, and the appointment of said statutory receiver; and that leave be granted to said receiver to incur such indebtedness and to make such expenditures as may be necessary and proper in and about the conduct of said business, and that your complainant may have such other and further relief in the premises as the nature of the same may require, and as may be agreeable to equity and good conscience.”

Upon the filing of this bill, an order was made directing the defendant to show cause why an injunction should not issue and a receiver be appointed as prayed for. The defend-

ant answered the bill (page 44) denying the charges of fraud and alleging that the complainant was acting in collusion with one Berry who was the inventor of a grease cup, and licensor thereof to the defendant company with the design of securing a return of his invention, and showing that the sales of stock were being conducted by virtue of a contract, a copy of which was attached to the answer. Affidavits supporting the allegations of the answer were annexed to the answer. The individual defendant, Mr. Hoshor, also answered. Replying affidavits were presented, and Vice-Chancellor Backes directed that the complainant amend his bill, which he subsequently did (page 147). This bill sets up the admission of some other parties co-complainant stockholders owning a few shares, and creditors with claims of \$77.60 and \$64.35 respectively.

The ninth paragraph of the amended bill claimed that the corporation never had any assets in the State of Delaware and,

“That all of the defendant’s property has at all times been and is now located within this State.”

No proof of this allegation was exhibited.

The amended bill contained the following prayers:

“2. That the said defendant company may be decreed to be insolvent and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its stockholders and creditors, and that same cannot be conducted with safety to the public and advantage to the stockholders.

“3. That a receiver be appointed for said defendant corporation, according to the statutes of this State in such case made and provided.

“4. That an injunction issue from this Honorable Court, restraining the said defendant corporation and its officers and servants and agents from exercising any of its rights, privileges or franchises, granted by the State of New Jersey to said corporation, and from paying out, selling, assigning or transferring any of its assets, moneys, funds, lands and tenements or effects, except to a receiver appointed by this Court until the Court shall otherwise order.”

Answers and supporting affidavits were filed (p. 206) denying the allegations of the bill, and more particularly the allegations of paragraph 9 above referred to with reference to the location of the company's assets.

The affidavits further disclose that the company had a New York office where its finances and stock operations were conducted; had a valuable contract for the manufacture of its grease cups in the City of Chicago, whose execution was delayed by the failure of the inventor to send blue prints to the Chicago firm, and that the business of the company that was conducted in New Jersey, was only a small part thereof. (See pp. 48, 51, 71, 80, 97, 199, 200, 218.)

After a hearing, the Vice-Chancellor signed an order (p. 239) reciting the filing of the original bill and the issuance of an order directing the defendant to show cause why

“among other things an injunction should not issue and a receiver be appointed according to the prayers of the original bill of complaint filed herein. * * * ” This order further reads “And it appearing to the Court that the defendant corporation has become insolvent and is insolvent and is not about to resume its business in a short time hereafter with safety to the public and advantage to its stockholders, *and that the prayers for an injunction and for the ap-*

pointment of a receiver should be granted, it is on this 26th day of January, 1926, upon motion of counsel for complainants, ORDERED, ADJUDGED and DECREED,

“1. That the Berry Automatic Lubricators Corporation, the defendant in this suit, has become and is insolvent and is not able to resume its business in a short time hereafter with safety to the public and advantage to its stockholders.

“2. That an injunction issue against defendant corporation, according to the prayer of the bill of complaint, and that said corporation, its officers, servants and agents absolutely desist and refrain and they are hereby enjoined and restrained from exercising any of its privileges of franchises, and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by this Court.”

The order directed the giving of a bond by the receiver so appointed and fixed a day, the 2nd of February, 1926, for the stockholders and creditors to show cause why

“said receiver should not be continued or why some other person should not be appointed receiver in his place or with him as co-receiver.”

A copy of that order as printed (p. 239), certified to by Mr. Greene, counsel for the complainant, was on the day it was entered, served upon the counsel for the defendants. An appeal dated the 3rd of February was filed from said order. Upon a motion on behalf of the defendant for a stay pending the appeal subsequently made before this Court, it transpired that the order thus originally signed and served, had subsequently been altered by the insertion in manuscript in the second paragraph of the order after the

words "restrained from exercising any of its privileges of franchises" the words "granted by the statutes of this State," said to have been done by the Vice-Chancellor, and also by changing the date for the hearing, on notice to the creditors and stockholders as to the personnel of the receiver, from the 5th to the 2nd of February. The first intimation that the defendants or their counsel had of this alteration of the order was at the hearing of the motion before this Court. This Court granted the motion for a stay relieving the Receiver of his duties. A copy of this order is page 253 of the case.

If these changes were made by the Vice-Chancellor, it was after the order, as originally framed, had been served.

ARGUMENT.

The order in either form was erroneous and illegal, as undertaking to manage and control the internal affairs of a Delaware Corporation.

I.

That a receiver may in a proper case of insolvency be appointed by the Court of Chancery for a foreign corporation having assets within the State of New Jersey, cannot be questioned. The authorities, however, plainly manifest the limitations of such right.

In *Minchin v. Second National Bank*, 36 N. J. Equity, 436, Chancellor Runyon said:

"Obviously there are provisions of the act which cannot be applied to such corporations (foreign corporations) for example, this Court cannot hinder such corporations from exercising their franchises, except as it may enjoin them from exercising them in this State. It can sequester their property here

and administer it for the benefit of creditors and stockholders, but it can do but little more * * * . The only question for consideration is, as to the character and extent of the power over the corporate property, for the purpose of administering it for the benefit of creditors or stockholders residing here. In the language of the New York Supreme Court, in *DeBemer v. Drew*, 57 Barb. 438, this Court cannot regulate the internal affairs of foreign corporations, nor enforce any remedy beyond the limits of this State; it cannot annul or forfeit their charters, but it can and ought to provide for the collection of debts against them, when they or their property are brought within the jurisdiction of the courts of this State. The foreign corporation doing business here is subject to the provisions of our statute, so far as its property in this State is concerned."

This Court in *Squire v. Princeton Lighting Co.*, 72 N. J. Equity 883, speaking through Justice Pitney, said:

"In *Minchin v. Second National Bank*, 36 N. J. Equity (9 Stew.) 436, a receiver had been appointed in this State for an insolvent corporation of New York under our corporation act of April 7, 1875, which, in section 103 (Rev. 1877, p. 196), subjected foreign corporations doing business in this State to all the provisions of the act so far as applicable. Chancellor Runyon, who decided the case, recognized that some of the provisions could not be applied to foreign corporations—for instance, that our Court of Chancery could not hinder such corporations from exercising their franchises, excepting as it might restrain them from exercising them in this State. He recognized that the question presented was as to the character and extent of the power over the corporate property for the purpose of administering it for the benefit of creditors or stockholders."

In *Goff v. Goff Electro Pneumatic Brake Co.*, 89 N. J. Equity 258, Vice-Chancellor Leaming said:

“The statutory power found in our Corporation Act has reference only to corporations which are actually or potentially insolvent. Section 96 of that act subjects foreign corporations doing business in this State to the provisions of the act, so far as they can be applied to foreign corporations; accordingly, in the appointment of receivers of foreign corporations that section can only be understood to contemplate insolvent foreign corporations. And, as is pointed out in *Minchin v. Second National Bank*, 36 N. J. Equity 436, there are provisions of the act relating to insolvent corporations which obviously cannot be applied to insolvent foreign corporations, since the Court of Chancery of this State cannot prevent a foreign corporation from exercising its franchises in another state. As there stated it can, under our statute, through the medium of a receivership, sequester the property in this State of an insolvent foreign corporation and administer it here for the benefit of creditors and stockholders, but it can do but little more; thus the efficacy of the provisions of section 96 of our Corporation Act, so far as it relates to receivers of foreign corporations, is confined to securing to creditors and stockholders, citizens of this State, a just proportion of the property in this State of foreign corporations when insolvent.”

In *Hitchcock v. American Pipe & Construction Co.*, 89 New Jersey Equity 440-445, Vice-Chancellor Lane, speaking of the subject said:

“I have no doubt of the power of this Court to appoint a receiver of a foreign corporation and wind up its affairs, so far as assets within this State are concerned, and to deal with assets within the State, under our statute, at the suit of a creditor or stockholder. Nor would I have any doubt but that

the Pennsylvania Court might, if any statute gave it jurisdiction, act upon the assets within its control, at the suit of a stockholder."

In *Albert v. Clarendon Land Investment & Agency Co.*, 53 N. J. Equity 623, Vice-Chancellor Van Fleet said:

"The defendant is a foreign corporation. Our statute concerning corporations declares that foreign corporations doing business in this State shall be subject to its provisions so far as the same can be applied to them.
* * * The meaning of the section of the statute which I quoted seems to me to be clear. It was enacted to give this Court the same jurisdiction over corporations doing business in this State when they become insolvent and have property here, that it exercises over insolvent domestic corporations, so far at least as should be necessary for the sequestration of their property here, and converting of same into money."

A very comprehensive review of all the authorities upon the subject was made by Vice-Chancellor Lane in *Atwater v. Baskerville*, 89 N. J. Equity 121, and the previous authorities are all collated. His opinion was affirmed by this Court in 90 N. J. Equity 275. As shown by the opinion of this Court, the views taken by the Vice-Chancellor in no way militated against the views of this Court in *McDermott v. Woodhouse*, 87 N. J. Equity 615.

Accepting the foregoing as the well-settled doctrine of this State, both in the Court of Chancery and in this Court, it is evident that the Vice-Chancellor in the order in question (whichever form be considered) exceeded his powers. In the first place, he determines (page 240, line 22) that the prayers of the original and amended bills for an injunction and for the

appointment of a receiver should be granted. These prayers are quoted above, and have absolutely no limitation whatever. On the same page (at line 32) he directs

“That an injunction issue against the defendant corporation, according to the prayer of the bill of complaint * * * and requiring it to desist and refrain from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by this Court.”

It will be remembered that the defendant corporation had appeared and answered both bills, and the order, if valid, absolutely tied its hands upon its assets wherever located. The order further bestowed (page 241, line 11) upon the receiver

“all the powers incident to his appointment as such receiver”

and provided

“that he do and perform all the duties imposed upon him and required by law.”

The order as originally drawn directed that the “corporation, its officers and agents, desist and refrain, and they are hereby enjoined and restrained from exercising any of its privileges of (or) franchises” (p. 239). The attempt was made in the alteration to confine the franchises to those “granted by the statutes of this State.” What are such franchises? The provisions of Section 97 of the Corporation Act forbid foreign corporations from commencing business in this State until they shall have filed a copy of their charter with the Secretary of State, and have received from him “a certificate that it is authorized to transact business in this State.” No one has ever previously contended, so far as

I know, that such a certificate is a franchise granted by this State; but if it be, and the general language of the original order as regards its alteration be confined to such certificate, nevertheless, the other provisions of the original order already referred to, and which are quite unaffected, by the terms of which the Court undertook to take absolute charge of all the assets of this company wherever located, and forbade their transfer or disposition, went way outside of its authority. It is well settled that the efficacy of Section 97 of the Corporation Act providing that corporations doing business in this State shall be subject to the provisions of the Act so far as the same can be applied to foreign corporations, is confined to securing creditors and stockholders, citizens of this State, a just proportion of the property in this State of foreign corporations when insolvent by sequestering its property in this State through the medium of a receivership.

Goff v. Goff Electro Pneumatic Brake Co.,
89 N. J. Equity 258.

Minchin v. Second National Bank, 36 N. J.
Eq. 436.

National Trust Co. v. Miller, 33 N. J. Eq.
155, 159.

Atwater v. Baskerville, 89 N. J. Eq. 121.

Island Heights Co. v. Brooks, 88 N. J.
Law 613.

It is fundamental that it is incompetent for the Court of Chancery to regulate the internal affairs of a foreign corporation. *Jackson v. Hooper*, 76 N. J. Equity 592.

II.

The foregoing makes it unnecessary to discuss the question whether this company was shown to have been insolvent, for in the absence of insolvency, no power exists in the Court to appoint a receiver of any kind for a foreign corporation.

Dolan v. Universal Fire Brick Co., 89 N. J. Equity 138;
Goff v. Goff, 90 N. J. Equity 258.

A careful analysis of the proofs, demonstrates the company was not shown to be insolvent at the time the order was made. The burden of the whole case rested upon the allegations of fraud by which it was claimed that some of the complainants had been induced to purchase stock in it. Their remedy obviously, if their claim is justified, was otherwise than for a receiver appointed for insolvency. It is insisted that the Vice-Chancellor was carried away with his views as to the conduct of the salesmen of the shares of the capital stock of the company. A careful reading of the affidavits of Mr. Cawley (page 214) and of the impartial certified accountant, Mr. Hastings (page 226), in connection with the affidavit of Mr. Hoshor (page 229), is convincing upon this point, and there is nothing in the affidavit of Mr. Besser (page 257) that in any way offsets this testimony.

The order should be affirmed.

Respectfully submitted,

ROBERT H. McCARTER,
Counsel for Appellant.

May Term, 1926.

