No. 2.

# ARGUMENT OF BENJ. F. BUTLER,

BEFORE THE

## Rhode Island Supreme Court,

(SITTING IN EQUITY,)

JUSTICES POTTER, STINESS, AND TILLINGHAST,

SEPT. 28, 1881.

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IN CASES QUIDNICK CO. VS. CHAFEE, ET ALS.

SAME *vs.* SAME.

CHAFEE, TRUSTEE, ET ALS., VS. A. & W. SPRAGUE MANUFACTURING CO., ET ALS.

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MAY IT PLEASE YOUR HONORS:

I think that I might premise by saying that if the exact statement of the affairs shown in these very complicated cases has been stated to your Honors by my learned opponents, and there were no others to come to judgment before your Honors, and to determine your conscience, that perhaps I could safely admit that those whom I represent would have no standing in Court upon those facts. Even then, the ques-

tions of law raised by our demurrer, so fully presented and substantiated by the authorities cited in our brief, and argued thereon, would be no bar to all the motions made, and relief sought by our adversaries. The law is so fully and completely against them, that they seem to have abandoned all legal argument, and rely solely upon the facts as stated by themselves, to raise some undefined, supposed equity in their behalf which will cause your Honors to over-ride the law to aid them in their suits. Though stated strongly, and certainly with sufficient earnestness, and vehemence, but erringly, the facts of the case have not yet been put before your Honors. The story of the Sprague estate remains yet to be stated, and I will endeavor; as well as I may, to state it, not unerringly, because I am human and the mind is finite; but I know the Court will assume that I endeavor to state it correctly, because you will perceive that I can have no motive to do otherwise. I should only lose ground in the mind of the Court by straining evidence or misstating facts, if I could be otherwise capable of so doing.

I shall say very little upon the law of the case, because my learned associate's citations of authorities to the law touching this case are so full, and his argument is so cogent and complete, that little remains to be said on our side in that behalf. It is difficult and useless to glean after such a reaper! If in what I do say, however, I should appear elemental, enunciating only familiar principles of law and equity, it is because I have heard what in my judgment are the very foundations of equity jurisprudence and practice attacked.

I believe that a court of equity does look and should look to the true, exact justice of the case within the rules of law; but I make it my postulate that a court of equity, cannot take away, and never does take the legal rights of any man. It is a court appealing to conscience, and only restrains men from using their legal rights to the injury of others — unjustly, and against conscience. That, as I understand the reading of my profession, is the foundation of equity jurisprudence. A court to reach what they deem equity will not set aside legal

rights, but they can always shape the exercise of those legal rights so that they shall not work injustice; and when a court of equity can ascertain the exact right and truth of a case, it always supports the just rights of the suitor, restraining the assertion of legal rights, which would work out injustice, and bind parties to unconscionable and oppressive legal contracts and bargains.

To illustrate my meaning, a party gives a deed of his land to another to secure the payment of a debt with legal interest. The debtor fails to pay on the day. The creditor insists upon taking the land as his own, being of much more value than the debt. A court of equity, not regarding time as essential, but looking to the body of the contract, which is that of security for a debt only for which the land is pledged, will allow the debtor to redeem the land upon full reimbursement of the creditor for all that he has lost by the delay.

It is only "to point a moral and adorn a tale" that the courts allow the pound of flesh to be taken, and only prevents the assertion of a legal right by the punishment for the crime necessarily committed in its assertion.

Therefore I stand here to appeal to the justice of this Court of Equity — the highest court of the land — in favor of those whom I represent.

There are some facts that are not in dispute, yet but few. One fact is, that the Quidnick Company is a corporate entity created with certain powers and rights and duties, by the State of Rhode Island, of which certain persons were the legal stockholders. Another fact is, that there was at the time of the making of the trust deed, about which we hear so much and about which I must say more, a large amount of money, three hundred odd thousand dollars more or less, due from the A. & W. Sprague Manufacturing Company, another distinct corporate body legally created, to the Quidnick Company, and that sum still remains unpaid; unless the notes which the Quidnick Company are supposed to have received under the trust mortgage have been received by that corporation in payment of that debt. That fact of payment Mr.

Chafee's bill in equity now in hearing denies, and says that the Quidnick Company received those notes not in payment, but as collateral security only.

Bill in Equity, Chafee, Trustee *vs.* Quidnick Company, No. 1932, page 6.

Another fact that is not in dispute is, that the Quidnick Company, as such corporate entity and body, was entirely solvent, in good credit, in good standing, and perfectly able to manage its own business with its own funds and pay all its debts on demand.

Answer of Chafee in Latham *vs.* himself, U. S. Circuit Court.

Another fact that is not in dispute is, that it has ever remained so, except for the acts of Mr. Chafee.

Another fact is, that under the contract, about which we shall hear further, the A. & W. Sprague Manufacturing Company, or Mr. Chafee the trustee, or both, owe another large debt from one or both to the Quidnick Company, growing out of advances to one or both, under that contract.

Answer of Chafee in Quidnick Company *vs.* Chafee, page 4, No. 1927.

The only contention between the parties on this subject is the amount of that debt, and that turns upon the question, what is the value of certain property which the Quidnick Company holds as security for that debt, and, as my learned opponent very naively expresses it, if that property goes up in the market the debt will be less, if it goes down in the market the debt will be more. Upon that I only say that I think he is mistaken. If the property goes up in the market the debt will be the same, but the security will be larger. If it goes down in the market the security will be less. I don't understand that the amount of my security affects the amount of the debt of my debtor, for which I hold it. Nor can I suppose it will be claimed that a court of equity is to be swayed

in its judgment as to the amount of a debt by the state of the stock market, looking to see how possibly hereafter the market value of the security held for it will rise, or possibly hereafter the market value of the security will fall. The debt of $1,200,000 stands upon the books. It is now claimed that there is within two hundred thousand dollars, or thereabouts, property enough to pay that debt held as security from property under the contract, but that does not alter the indebtment. Two hundred thousand dollars now is admitted to be due over the present value of the property pledged to secure it.

Now, may it please your Honors if it may seem singular, but I believe I have stated all the matters that are not actually under dispute, and all the matters about which there is not conflicting testimony, and upon these other facts which I will now state the greatly preponderating weight of testimony is in favor of the side I represent. True, some of them are not denied by our opponents, but they may be denied. Those that I have stated are not even denied.

Your Honors will now see how widely we differ as to all the other facts from the beginning. It was stated to you with great positiveness by my learned opponent yesterday, that the arrangements originally proposed for the reconstruction of the Sprague estate were wholly a scheme of the Spragues. That is not so. Let me speak what is history, and confirm my words by the contemporaneous records.

The Sprague family had for a long series of years carried on a large manufacturing business, which, to use the eloquent words of my brother who last addressed you, at the time the scheme was in progress was the glory of Rhode Island. They then found that from inter-marriages and deaths and other considerations, it was necessary to bring that business into a different form from a simple partnership. The larger portion of it belonged to the Sprague family under the partnership name of A. & W. Sprague, then represented by Amasa and William, the sons of the elder Amasa, by Fanny Sprague, the mother of William and Amasa, and Mary Sprague, the aunt. They thereupon applied to the Legislature of the State

of Rhode Island, and two corporations at different times, years apart, were made for the very purpose of segregating the rights and interests of the parties, one known as the A. & W. Sprague Manufacturing Company, and one afterwards created known as the Quidnick Company, and from that time up to now, the business of these two companies were always distinct and separate. The Quidnick Company never made or indorsed a note for the Sprague Company, or for the business of the Sprague copartnership, or for the mercantile house of Hoyt, Spragues & Company, and neither of the last-named concerns were ever called upon to guarantee or indorse the paper of the Quidnick Company. And that was done may it please your honors, *ex industria;* because in the family there were two old ladies now over eighty years of age —verging upon eighty even then, and past the three-score and ten, the limit of average life,— and it was deemed by all the family that their declining years should be beyond the reach of all speculation and of all the vicissitudes of mercantile affairs. Thereupon a large portion of their property was transferred to the Quidnick Company. There were then minor heirs, and their property should also be put beyond the reach of mercantile fluctuation, and their property was also transferred to the Quidnick Company, and they became the owners of the stock, and some of them, as I shall contend, certainly some of them, and more of them than has been admitted here, remain owners of the stock down to to-day.

Now, then, when William and Amasa Sprague, very young men, had the great burden of this property thrown upon them, it was of small comparative value. By their industry and energy that property increased nominally to the sum of $22,000,000 from much less than a quarter of that sum. Gifted with very considerable ability to manage affairs, taught from boyhood how to manage property, their imprint alone was made worth a fortune to any mill. In addition to that, the whole of this immense capital, with which the miser or the grasping man might have purchased United States bonds for thirty or forty cents, now to be worth 130,—instead of

doing that, without looking at the question of a fortune and living upon the interest of their investments, they extended their enterprises all over Rhode Island, into Connecticut and Maine; and everywhere that manufacturing enterprise demanded capital, that of the Spragues could be invoked with success until the sweeping disaster of 1873 came, that shook everybody's fortune. Meantime they owed, as it turns out, only about $8,000,000, and they had property nominally to the amount of $22,000,000, about one-third—an indebtment of one-third, and one for which there is no discredit upon them, because all well-managed business may be allowed to contract debts to the amount of one-third of its assets. But in 1873 it was almost impossible to get money. It was impossible to meet mercantile obligations. The Sprague paper, with $8,000,000 of indebtment, was in almost every bank in Rhode Island; nay, it crippled every bank. One bank had $600,000 capital and $700,000 worth of Sprague paper. The suspension of one piece of that paper made disaster (for that suspension was discredit to all), for by the laws regulating national banks any bank holding suspended paper to a considerable amount of its capital must be closed up if that suspended paper was even a modicum of its capital. In that emergency something must be done to save the industries of Rhode Island, to save the financial credit and all the financial interests of the State, and, indeed, of other states. It was no more necessary that something should be done to save the accumulated earnings of this family of long years, than to save the earnings of the laboring men and women in the savings banks of the State. It was not only the private interests among private men, I might say it was almost the failure of the State, and the best minds in the State got together for that purpose to ascertain what should be done. To do this the creditors of this great estate (I read from the Providence *Journal* an extract, of which I have made an exhibit in my bill,) had a meeting, "The Bank Meeting"—that is the name of it. At that meeting a committee reported that there was a surplus of $8,000,000 to the A. & W.

Sprague estate, and they made the entire assets — total amount of the two concerns — these two concerns being Hoyt, Spragues & Company and the A. & W. Sprague Manufacturing Company were made to have $11,719,000 of surplus, and that would bring up the total assets, putting together individual assets, to $22,000,000. Now, then, that being the condition, what did the committee report?

"Your Committee, in making the above detailed report of the condition of the A. & W. Sprague Manufacturing Company, have endeavored to comply fully with the spirit of the following resolutions, under which they were created:

RESOLVED, That in the opinion of the representatives of the banks of this city, aid ought to be extended to the A. & W. Sprague Manufacturing Company, to enable it to meet its maturing obligations, provided a committee shall, upon examination of the affairs of the company, report that the sum of $1,000,000 requested will be sufficient to meet the probable requirements of the company; and provided, that the mortgage security offered therefor shall be sufficient.

RESOLVED, That James Y. Smith, Seth Padelford, Rufus Waterman, and George F. Wilson be a committee to make the examination, and said committee are authorized to take the opinion of counsel upon the validity of the proposed mortgage."

"To determine whether the mortgage proposed" —

[That is, the Spragues asked to mortgage their property and get $1,000,000 of quick assets—nobody doubted their solvency—by which to meet their maturing obligations.]

"To determine whether the mortgage proposed would be valid and free from objection under the provisions of the Bankrupt Act, they were compelled to ascertain whether the amount of aid asked would, in all reasonable probability, be sufficient to enable the company to meet its maturing obligations in the course of business. The unsettled condition of financial affairs, and the business at the present time, and the large amount of obligations of the company maturing during the next ninety days, preclude the possibility of your committee reporting that the sum of $1,000,000 would enable the company to meet its engagements regularly in the

future, and, as in the event of a failure to do so the validity of the security might be questioned, your committee, under the advice of counsel, are of the opinion that the sum asked for cannot safely be furnished.

Upon coming to this conclusion your committee were requested by the company to express their recommendation of the best course to be taken under the circumstances, to enable the company to secure to its creditors the payment of their claims, and to preserve as far as possible from shrinkage, the vast available property in the hands of the company.

They therefore recommended that the A. & W. Sprague Manufacturing Company, and the individuals comprising the corporation, mortgage all their property to three trustees, who shall practically have all control and management of the entire property.

These trustees to issue notes to an amount which shall fully cover the amount of present indebtedness, these obligations having three years to run, and drawing semi-annual interest at the rate of seven and three-tenths per cent. per annum, with the right reserved to pay five per cent. of the debt as often as in their judgment shall be practicable.

It is believed that all the creditors will accept these evidences of indebtedness, and if the trustees have the full authority asked for them, they will be able to avert a great calamity to thousands of operatives, make the mill properties valuable, prevent an immense further shrinkage of values, and pay in full the indebtedness of the A. & W. Sprague Manufacturing Company, together with that of all its depending establishments.

It being the duty of the trustees to convert the property and pay the debts at as early a day as possible, it is not unlikely that the whole indebtedness may be canceled in much less time than three years.

Respectfully submitted,

JAS. Y. SMITH,
SETH PADELFORD,
RUFUS WATERMAN,
GEORGE F. WILSON,

*Committee.*"

Then, as I said, the total surplus of the two concerns was $11,719,000.

Now, then, I have an eloquent tongue to speak for the Spragues, and whether they were to blame for this downfall. I read from the report in the *Journal*, passing over to other matters: "Mr. Thurston said 'This family has been the glory of this State.'" With how different language a man gets treated when he is poor and unfortunate. How my learned brothers berate the Spragues here and now.

What then was done, and I will ask my brother, as I have the close, if they think I get anything wrong I will thank them if they will call attention to anything they believe I state unfairly or incorrectly. They will not interrupt me. They will not embarrass me in so doing. I desire to get this matter right. What then was done? A deed was prepared and executed to three trustees appointed by the creditors. In that deed, may it please your Honors, or in any other, there was not included or referred to the Quidnick Company or its stock, or its stockholders, as such. Take that with you, and carry it with you through this discussion, for it is a most important fact conclusive upon the argument made here to-day. Not the slightest mention. There was no expectation that the creditors would either be called upon to, or demanded, or that they would be obliged to, swallow up this Quidnick property, the provision of these old ladies in their old age. For there was an honorable, nay, public spirited desire on the part of the creditors, all of them, to lay this by for those who, in the prime of their lives, had married into this family and given their lives to the advancement of its interests.

This deed was prepared, bearing date the first day of November, 1873, and prepared to be executed by these trustees named by the creditors, submitted to them for their acceptance in *totidem verbis*, with one exception, and with the deed to Chafee.

I shall ask your Honors to look at it with your own eyes — prepared and signed by Spragues. They held it under advisement till the 29th of November, when they sent the letter

which is made an exhibit in the case, saying that they could not accept the powers and duties imposed by it.

The true reason was, they could get no advance of the million dollars needed to carry on the business. Everybody was too much employed in taking care of themselves, to advance a million dollars, and they could not carry on this business, and the scheme was to fall through, and everything was to fall through, and everything had fallen through. In the meantime, may it please your Honors, certain creditors threatened to make attachments. I read now from the sworn answer of Mr. Chafee to the bill in equity brought against him in the U. S. Circuit Court, by Mary Ann Latham (p. 6), which I shall have occasion to refer to hereafter:

"Meanwhile many creditors had become dissatisfied with the delay, and it was satisfactorily ascertained that certain creditors, holding large claims, were preparing to place attachments upon the property, in which case the scheme which had been carefully matured for the conservation of the property for the equal benefit of all the creditors was in danger of being frustrated."

That is Mr. Chafee's statement, which shows that this trust deed was made in order to hinder and delay creditors.

I speak now and here, your Honors, in behalf of the Quidnick Company, one of the creditors thereby hindered and delayed.

How was this thing effected? The A. & W. Sprague Manufacturing Company had held a meeting and had authorized, and without any previous notice, had changed their by-laws, which required the president to execute a deed, and having by vote changed the by-laws, the meeting authorized Mr. Amasa Sprague, treasurer of the company, to execute a deed to the three trustees named by the creditors. That was done on the 28th of November, when it was supposed that the trustees would accept it. They refused to accept it on the 29th. In the mean time, this deed and many other duplicates, in order to have them recorded in different parts of Rhode Island and elsewhere, this

identical paper — holding up the deed to Chafee — was made and executed, so far as the grantors were concerned, to Rufus Waterman, Amos D. Lockwood and George T. Nightingale, the parties of the second part, signed and witnessed in expectation that these trustees would accept. On the last day of November, the refusal of the trust of the 29th came. What could be done? A consultation was held. It is now twelve o'clock at night of the 1st of December, 1873. Mr. Chafee, the choice of nobody on earth so far as I can learn, except the then counsel of the Spragues and his own now counsel, but a necessary man; somebody must be brought forward — came to the front. Time presses. It was midnight. In the morning the sheriff would be in the works — would attach the property. A portion of the debtors and their counsel had a meeting. Mr. Chafee came to execute and sign the deed which had been executed to Waterman and others as trustees, and the convenient method was taken of striking out their names and putting in his. Inserting his simply. No other change was made except "parties of the second part" was altered to "*party* of the second part" and "their" altered into "his." A notary public was sent for, and the deed was then acknowledged before him by all of the parties who were present.

William Sprague was not present.

He had duties which called him to Washington as Senator. He was to be there on the first Monday in December, and was there. He did not acknowledge it — did not know anything about this change of front — and the deed was recorded, his name in the acknowledgment being stricken out, but with his signature, as if he had signed the changed deed. This is an answer to Chafee's bill now before the Court. It was recorded, I say, and William Sprague came back and acknowledged this deed on the 8th of December.

*Mr. Thurston.* Beg your pardon General, did I understand you to say the deed was executed to the original trustees and then afterwards altered and executed to this trustee?

*Gen. Butler.* I thought I made myself understood clearly

—it was executed up to the acknowledgment, to the original trustees.

*Mr. Thurston.* You are entirely misinformed.

*Gen. Butler.* I have had no opportunity to test the question by trial, but I shall do so hereafter.

*Mr. Thurston.* I can assist you to test it.

*Gen. Butler.* Of course you will. If I had no other evidence I would go to their Honors on an inspection of what the deed is — on an inspection of the ink of the signatures alone.

*Mr. Thurston.* I will join issue with you and accept the challenge.

*Gen. Butler.* I pledge myself to show your Honors how this was done — how Mr. Chafee got in, who now claims, through his counsel, to be the united choice of all the creditors. At any rate, it was recorded at 2 o'clock in the morning here at this office, and it was sent off to Cranston to be recorded, and that before William Sprague had acknowledged it, before he had ever seen it, or executed it to Chafee, and before he knew, except by telegram, that Mr. Chafee was to be called in as the *locum tenens*, of which a free translation would be "Jack-at-a-pinch."

If my learned friend who has just taken issue with me will turn to his own client's answer, made under his supervision, to the bill of Mary Ann Latham in the United States Circuit Court, he will find, after stating that the property was liable to be attached, which I have heretofore read, that his client swears in these words:

"In this extremity the officers of the A. & W. Sprague
"Manufacturing Company, and all the stockholders, with the
"exception of William Sprague, who had absented himself
"from the city of Providence during the whole period of the
"Sprague embarrassment, earnestly solicited this defendant
"to accept the office of trustee under the mortgage."

If, as Chafee swears, William Sprague was absent during

the Sprague difficulties, how did he manage to sign that deed at midnight?

But it is not true that he was absent all the time. He left Providence November 29th, and came back December 8th.

I shall be ready on this issue whenever called upon.

And now may it please your Honors, this is the inception of the trust deed. This is the transaction, and it is set up in our answer, and put in issue here because, may it please your Honors, Mr. Chafee has brought us into court by his bill, and being in court all issues between plaintiff and defendant can be here tried.

I gave your Honors a misquotation yesterday as to the book where the authority I cited could be found. I said "Wallace." I should have said 4th *Otto*, p. 741, Corcoran *vs.* the Chesapeake Canal.

"It is said that Corccran, and his co-trustees, the canal company and the State of Maryland, were all defendants to that suit, and that as between them no issue was raised by the pleadings on this question, and no adversary proceedings were had."

"The answer is, that in chancery suits, where parties are often made defendants, because they will not join as plaintiffs, who are yet necessary parties, it has long been settled that adverse interests as between co-defendants may be passed upon and decided, and if the parties have had a hearing, and an opportunity of asserting their rights, they are concluded by the decree as far as it affects rights presented to the court, and passed upon by its decree."

In the case *a multo fortiori*, do these questions between party and party, plaintiff and defendant, become a necessary part of the history of this case. This is the very foundation of Chafee's title.

Nay, you have been told over and over again, with sufficient reiteration, that it was a part of the scheme of the creditors to run this trust estate by the aid of the Quidnick Company.

As we now see, not a word of it is correct. This is the

very matter which we put in issue in this case. On the contrary here was the trouble: Great creditors in amount were pressing their claims by suit. The trustees chosen by them had declined. No money had been raised. The creditors' scheme had failed, but that did not include the Quidnick Company. What is to be done? The estate is lost. What is the use of now giving this trust. The trustee, Chafee, cannot run the mills, and in this emergency, for the purpose of saving this property to the Sprague family and their creditors, believing that all debts would be paid, the old ladies were consulted, and it was agreed that their property, the Quidnick Company, should be used to sustain the credit of the trust estate, and the business of the trust should be carried on by the use of the Quidnick estate, and all the stocks — and there were a hundred different companies — of all the different companies should not be conveyed to the other trustees. That had been agreed upon before. It stands so in the printed deed, because there were hundreds of banks, and I think, I say, other companies, Horse Shoe Company, Flax Company, Foundry Company, and all kinds of companies owned by the A. & W. Sprague Manufacturing Company, and the Horse Railroad Company, and to prevent complications, the trustees said they would have nothing to do with those companies, of which the stockholders still remained the owners. And so as to the Quidnick Company, they would have nothing to do with it. And when afterwards it was agreed upon to use that company, it was agreed with these old ladies, and they were told: "You put in the Quidnick Company, if you allow its credit to be used, that which came from your husbands as your dower shall be used to extricate your sons. As their creditors it shall remain. You shall be secured. The Quidnick property shall remain yours." And the scheme of collateral was devised with the distinct understanding and pledge, sworn to by four different individuals on that night and not denied by Chafee, who was the only person who could deny it, except the counsel, and they won't, and that it was agreed that all the property of the A. & W. Sprague Manufacturing Com-

pany should be exhausted to pay their creditors before the Quidnick stock should be touched, and the old ladies should have the dividends of the Quidnick stock for their support. Why should they not have made that arrangement which now appears to have been a disastrous one. At that hour, and we must throw back our minds to that hour, every one believed, the committee of the creditors believed, that the $19,000,000 of assets would pay $8,000,000 worth of debts, and sooner than three years. Therefore, everybody made these arrangements, — everybody agreed to it. With the Quidnick Company's help they could pay up all.

Am I not right, therefore, in appealing to (divine) justice— to this Court, and in the language of my brother, to "sweep away — brush away as far as you can, all legal technicalities and come to what is justice?" And where is the creditor of the A. & W. Sprague Manufacturing Company, who is not a sharper in his conscience and dealings, who will ever find fault? Let the old ladies have what is their own.

I want you to read, may it please your Honors, all the affidavits. Read them in the light which the argument has thrown upon these transactions at the midnight hour. Read them in the light in which the action appeared in the minds of the parties. See these old ladies and their counsel as they consult together as to their property, which ought to be held for them and their safety, and not so much as named in the trust deed. See these old ladies walking up and putting their property at risk, when no creditor ever thought of troubling them! — subsequently some of the more grasping have been induced to come up and consent to the use of their names in aid of Chafee.

Now, may it please your Honors, we have brought this history up to the time of the inception of this contract. One thing more is to be added — afterward, on the 2d of December, a meeting was held, kept open by the advice of counsel from former adjournments, which appears in the records as of the day of the first, this deed being between 12 o'clock at night on the 1st and 2 in the morning; but in the morning

of the 2d, in business hours, a meeting was held, and Mr. Amasa Sprague as Treasurer — the by-laws being changed without notice to the company, in the call of the meeting, as appears by the records which lie on this table — was authorized to execute this deed to Chafee. The deed had already been recorded in Providence and Cranston before that authority was given. Mr. Chafee, by that very deed, held the whole stock of the A. & W. Sprague Manufacturing Co. under his control at the time that authorization was voted on that 2d of December.

The estate thus went into Mr. Chafee's hands, and the next thing that was done was to secure these old ladies as well as they could, if it could be done.

I will do him the justice, as I have got to say some things not very complimentary to him — I always rejoice to say complimentary things when I can — he did as well as he knew how, and the others did as well as they knew how, to save these old ladies their property. May it please your Honors, there were hundreds of companies and banks, for the A. & W. Sprague Manufacturing Company had tremendous resources through all its ramifications, and there were other stockholders of the A. & W. Sprague Manufacturing Company, all of whom ought to have been called upon to assign their stock to Mr. Chafee at that time as collateral, by the terms of the deed. He did not even get the stock of the A. & W. Sprague Manufacturing Company, except under this assignment as collateral, and subsequently the Hoyts' heirs and other heirs, outside members of the A. & W. Sprague Manufacturing Company, all debtors on their personal liability, have been allowed to sell all their stocks, and yet Mr. Chafee did not call even for the stock of the banks to be assigned to him, except long after, when he needed them to borrow money. All these stocks were left to stand.

But the next morning this deed was done. I hold in my hands the transfer-book of the Quidnick Company, and I will take one transfer as a specimen of all. All these entries were made in one handwriting. All the stocks, beginning

with the first, "Fanny Sprague, December 2d, transfers her stock as collateral to Z. Chafee, according to the trust deed, etc.," and William, Amasa, and Mary Sprague did on the same day make the same transfer. Those transfers were not attested, not permitted by any officer of the company, except that some of those who did it were officers of the company. It was not assented to. It was unknown to the Quidnick Company, as a corporation. No meeting was held in which these transactions were either assented to or confirmed; more than that, by the charter and by-laws of the company no transfer can be made except by the surrender of the original share certificates. And these inchoate transfers were all that were ever made. They remained on the transfer-book; no certificate was ever surrendered, no new ones ever issued.

According to the charter and by-laws which make these things conditions precedent, nothing was done by any officer of the company. No date was on the check stub; that was not filled out at all. A new certificate to be issued was required. Nothing of that sort was done, and they remained in that form, as they remain to-day, in the same condition — in that inchoate condition. These stocks have never been transferred even by way of pledge or collateral security; because, the laws of Rhode Island which require these requisitions to be a part of the transfer. No certificate was ever issued to Mr. Chafee. He never had and has not such new certificate. He may have got the old ones; but they were never delivered to him, and if he has got them at all we don't know how they were obtained; certainly not by delivery. The Sprague family used to put their valuable papers in the safe of the Quidnick Company, and perhaps he has found them there. But I don't mean without evidence to accuse him of stealing them, and therefore I say he has the old certificate, certain it is that we did not deliver a new certificate, and the possessor of it he does not anywhere set up. In law he got no title to this, and is it not clear that he ought to have one in equity?

Soon after the creditors began to attach, and there was a fear of what might happen. These old ladies had their cred-

itors, and thereupon similar inchoate transfers were made by these old ladies of their several shares to each other in trust for *their* creditors; never for the creditors of the A. & W. Sprague Manufacturing Company. They supposed they had secured them by that mortgage of all their property to the A. & W. Sprague Manufacturing Company, and by the pledge of all their stock in the Quidnick Company as collateral, but they did put them in trust to each other for their own creditors. They had carried out their covenant trustee deed that they should assign as collateral *sub modo*. They had at the same time taken a promise — a good one to be enforced in equity and at law — that the last thing to be called for was this Quidnick stock, and that they should have the dividends.

We have set this fact up in many different ways in our bills and answers, and they have never yet been denied, and such is the actual condition of that stock.

There is still another objection to the passing of the title of these stocks — that each stockholder was debtor to the Quidnick Company, and by law the company had a lien on the stock, so that it could neither be sold nor assigned till that lien is relieved. That position is not denied.

Now, after eight years, it is claimed that by allowing the stocks to be transferred the Quidnick Company waived the lien upon it. Our opponents admit the lien, but say the company has waived it. How? No officer of the Quidnick Company assented to it; no officer received a surrendered certificate; no officer had examined it, and no officer knew of any valid or completed transfer. The thing in its inchoate state has stood thus from that day to this, and as we set up, that what was done was by the assent of Mr. Chafee, and he admits that he has furnished these old ladies with their support from the property and funds of the Quidnick Company until within a year, when something else happened, to which I will call your attention.

Where then is the waiver by the company? All this time he is the treasurer of the company; he is the trustee of the creditors. Does he now admit that he has for seven years

been taking the funds of creditors to support old ladies who had no claim upon him or the creditors assets? See how all his acts, until he quarreled with the Spragues, chime in with this account that I have given of his liability to account to them for the Quidnick dividends. He has so done to a very considerable amount, as I agree, for eight years last past. See what confirmatory proof his conduct gives,— as if any proof were necessary more than we have offered. Both of the old ladies have had this support.

It may be convenient to finish this stock transaction, although it will take me a little out of the order of my argument, which I had intended should be made nearly on a chronological line. I have dwelt upon this part of the case a good deal.

My brother, Hart, is willing to let the Sprague family, governor and all, much as he dislikes him to have the control of the Quidnick Company, if your honor will only decree the stock to them. He says if you will only let us have the stock, you can "chuck his bill in equity into the waste basket." When I bring a suit in equity, I mean it shall go on the records of the courts forever as guardians of the rights of my clients.

I mean that my bill shall be a righteous complaint to remain as a witness forever, not an engine to obtain what does not belong to the complainants, then to be thrown aside like an abandoned and used-up battering-ram. If they could only get this stock from the old ladies — only get this property which don't belong to them, why then they hope to swallow up the whole. Your Honors will pardon me, therefore, for the time I spend upon the facts relating to this vital part of the case.

There were then 4,022 shares. It was made up — Mary Sprague so many, Fanny Sprague so many, Amasa Sprague and William Sprague so many, and the A. & W. Sprague Manufacturing Company 455, if I remember rightly, and these put together made the 4,022 shares, and *that* made the balance of power. But if these two old ladies have the voting

power of which they complain, how did they get it? It was because Mr. Chafee permitted the A. & W. Sprgaue Manufacturing Company, and William's Quidnick stock, and Amasa's Quidnick stock, which were a majority, to be transferred to these old ladies, as much as they were transferred. Chafee, the trustee, put all this stock into their hands. I don't blame him; he was an honest man before large interests corrupted him. He did it right, then, and why does he complain? Why does he complain that the old ladies manage the corporation? It was the vote of these old ladies that made him originally the treasurer of the Quidnick Company, and from that time until now he has never complained of that. They have not had anything to do with the management of that company since, till July 21, when they turned him out. He never impeached their capacity for business until they chose to use their power to turn him out. By their votes as stockholders of the A. & W. Sprague Manufacturing Company, this contract, under which he has carried on his trust for more than seven years, was made. By their votes the same contract was accepted by the Quidnick Company. He has never complained of their legal capacity or their business fitness to do these important acts. Now he says they are incapable in mind, and illegal in capacity, as stockholders, to vote, but this is after they had given notice to terminate that contract, and had elected a new treasurer, Chafee having put the Quidnick Company $600,000 in debt, for which its property is attached. He now, without a particle of evidence, attacks them with the rough side of a lawyer's tongue, as a reward for their trust in himself, and claims that they have no capacity for business, either legal or mental. The only evidence I see of their want of mental capacity to conduct their affairs is the fact that they ever had anything to do with Chafee at all.

I want to trace the condition of the Quidnick Company a little farther. At the time of making the trust deed and the contract, there was the stock of one Francklyn, and of one Lee, and of one Aylsworth, represented by shares in the Quid-

nick Company outstanding, in addition to the outstanding Hoyt heirs stock. Now let us see what Mr. Chafee did to get the Quidnick Company wholly in his hands. He says in his answer that on the fourteenth day of July, 1874, the Quidnick Company exchanged their debt against the A. & W. Sprague Manufacturing Company for the A. & W. Sprague Manufacturing Company's notes.

Let us see how matters stood at that hour. The A. & W. Sprague Manufacturing Company held 455 shares, worth about six hundred thousand dollars at that time. I believe it was appraised at that amount by the creditors' committee, on which by the statute creating the company it had a lien as against the A. & W. Sprague Manufacturing Company. The A. & W. Sprague Manufacturing Company owed the Quidnick Company a debt to the amount of $350,000. Now, Mr. Chafee knew the Quidnick Company was solvent, and the value of its stock, yet he deliberately gave up the company's lien on those shares, which would more than pay this debt, and exchanged the whole of that debt into these mortgage notes. That is done without a scrap of writing on the books of the company, or any action of the company or notice to the company. Who made this ruinous and foolish bargain? Zechariah Chafee, trustee, exchanged these notes with Zechariah Chafee, treasurer, and then Zechariah Chafee used up these notes for his own purposes, as we shall see. The Quidnick Company had nothing to do with it. That is what Chafee now, through his counsel, calls a waiver by the Quidnick Company of their lien on this stock. What should be done to the treasurer of a corporation who should take $350,000 worth of secured debt, and exchange it for insolvent paper? This was eight months after this trust was put in his hands. Your Honors will ask why should he do so. I answer, he took these very notes, and bought in the shares of Francklyn, Aylsworth, and Lee — all the outstanding shares which could be bought — he bought in those shares, as he says, for the Quidnick Company, and he did that without any voting power. The old ladies did not do this, or know that it was

done. If they had done it they would be open to all the hard words said of them. Chafee did not dare ask them. They had too much sense. Your Honors, if he didn't do this I will beg his pardon, and that will be pretty hard punishment. He represented himself as owner of two-fifths of the stock of the Quidnick Company, and called a meeting of the company, signing himself as "trustee, assignee, and mortgagee," and the by-laws require two-fifths of the stock to call a meeting. Having thus got the meeting—(I read from the records of the Quidnick Company, found in suit Mary Anne Latham *v.* Zechariah Chafee, U. S. Circuit Court, printed bill page 45, as follows):

SPECIAL MEETING.

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OFFICE OF THE QUIDNICK COMPANY,
NO. 3 EXCHANGE PLACE,
PROVIDENCE, February 15, A. D. 1875.

Pursuant to the following request in writing, in conformity to the by-laws, viz.:

"PROVIDENCE, February 15, A. D. 1875.

*To* ZECHARIAH CHAFEE, *Treasurer and Secretary pro tem. of the Quidnick Company.*

DEAR SIR: We, the undersigned, holders of two-fifths or more of the capital stock of the Quidnick Company, request you to call a special meeting of said company, to be held at the company's office in the City of Providence, at nine (9) o'clock, A. M., on Monday, February 15, 1875, for the transaction of such business as may be presented at said meeting, and to act on the offer under the charter, by the estate of Emanuel Rice, of sale of its stock to the company.

(*Signed*,) Very truly yours,

HIRAM B. AYLSWORTH,

*Administrator de bonis non, with will annexed, on the estate of Emanuel Rice, Z. Chafee, Mortgagee, Trustee, and Assignee.*"

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And to notice made and mailed, postage paid, to each stock-

holder, in conformity to the by-laws, of which the following is a true copy of the form of each, viz.:

"OFFICE OF THE QUIDNICK COMPANY,
NO. 3 EXCHANGE PLACE,
PROVIDENCE, R. I., Feb. 11, 1875.

*To* —— ——————

DEAR SIR: On request, in writing, by the holders of two-fifths ( $\frac{2}{5}$ ) or more of the capital stock, a special meeting of the stockholders of the Quidnick Company will be held at the office above named on Monday, February the 15th inst., at 9 o'clock, A. M., for the transaction of such business as may be presented at said meeting, and to act on the offer under the charter, by the estate of Emanuel Rice, of sale of its stock to the company.

(*Signed,*) Very respectfully yours,

Z. CHAFEE,

*Treasurer, and in the absence of President, pro tempore Secretary of Quidnick Company.*"

"The stockholders assembled at the time and place in said call and notice specified, 4,022 shares of stock being represented.

"In the absence of the president, Mr. Zechariah Chafee, treasurer, and as such, according to the by-laws, secretary, *pro tem.*, took the chair and called the meeting to order.

"The secretary, Thomas A. Whitman, having deceased, Clarence H. Guild was duly elected secretary of the corporation."

Thus, having claimed to be the owner of two-fifths of the stock, to call the meeting, Chafee claimed to represent and voted upon the 4,022 shares only, which stood in the names of the two Lady Spragues; he had no other shares. Mr. Chafee presided at the meeting, and did all the voting, and voted to buy the stock for the company. Three times this was repeated, and the stock of Aylsworth, Francklyn, and Lee was purchased. He paid one-half in the mortgage notes which he had taken in exchange, and the other half in cash, and bought in 641 shares of stock, paying for it $324 per share, or $207,684. I will not say why he paid for it in notes

belonging to the Quidnick Company, or whether he used those he purchased himself, claiming that he had a right to purchase the notes for which he held the trust deed; for, in answer to the bill in the United States Court, wherein we charge that he bought for his own use the trust notes, that charge he expressly admits. He says: "He has, with his own means and property, purchased notes secured under the trust mortgage from creditors holding the same, as he respectfully submits he had the right to do."

In that bill we charge him with having purchased these trust notes to the amount of over a million of dollars. We charged that he used the Quidnick money to purchase these notes, and he replied that he purchased some of them with his own money, and claimed that he had a right so to do, but he is silent as to how many he bought. But the Court thought otherwise. Notwithstanding this unauthorized purchase, we see that these 641 shares are still outstanding. The Hoyt shares are still outstanding; Hoyt had nothing to do with these acts of the Quidnick Company, and the executor — for he has an executor in New York — is not a party to it.

Now, where do we stand? What is the law and what is the right? I say no title ever passed out of the old ladies to their shares, and all that was done is void, for two reasons: In the first place there is no claim that the certificate was ever surrendered. There was no transfer under the by-laws, nor has there ever been. Second, the sale of these stocks it is admitted (if the lien of the Quidnick Company is not lost), is void. Now, I repeat, there isn't a scrap of writing by anybody. There was none by the Quidnick Company, not even by Zechariah Chafee, as to the giving up of any lien or assenting to the transfer of this stock by any of these parties. I insist, therefore, that these stocks are not transferred and could not be transferred in this or any like form. If they were transferred as collateral, they could not be alienated, and if transferred as collateral the voting and dividend drawing power belongs in the hands of the original holders, Fanny and Mary Sprague.

If transferred, the voting power belongs to them as trustees in trust for their creditors, and their creditors do not appear here to complain of their action. It is Zechariah Chafee who appears to make his claim, because he holds a trust for the creditors of that company. A few creditors come to his aid, but they do not sue in behalf of themselves and of the whole body of creditors, as they must do to have any standing in court. Look at their bill! Only a few creditors appeared, perhaps as a salve for Chafee. These are the parties who attempt to set up this claimed equity against us, but for themselves. The creditors of "the old ladies didn't complain." But it is not claimed that these old ladies have ever done anything wrong in the world except to turn out Chafee and put an honest man in his place as treasurer. The "head and front of their offending hath this extent, no more." They haven't used up the property in any form. It is admitted that when Chafee shut down the mill, they and the other stockholders put cotton and supplies into those mills to keep them running, and keep the men and women at work, who otherwise would be out of employment. These mills are now running under the supervision of our Court, and by our consent, as far as we had anything to do with it, and we are doing and intend to do nothing but what the Court approves, and all that we do shall be done openly and aboveboard.

Why, then, does Mr. Chafee come here and ask the Court to appoint a receiver of this stock? In order to get these mills back into his hands? What claim do they make as a ground for this, pray? They say Chafee is trustee for the A. & W. Sprague Manufacturing Company's creditors, and, as the stock now stands, for the old ladies in trust for their creditors, Chafee representing their creditors. But Chafee don't represent the creditors of which these ladies are the trustees. Even if the transfers were not *inchoate* he would only hold the stock as collateral security for the performance of a condition of a mortgage, and not in trust. But the trust in these ladies is for their creditors, but if they ever had

any creditors the debts have long since past the time of the statute of limitations. They have created no new debt; they never signed nor had anything to do with these mortgage notes. Their names are not to them; they are no debts of theirs. The old debts are long since buried, and that ends the trust security.

Why should these old ladies be interfered with? It is only for the purposes of Mr. Chafee, to carry on this business of his trust, out of which he has made so much money that he can "from his own means and property" purchase a million of the trust notes, as he does not deny he has done. This is the gravamen of their complaint in this matter. They say a receiver must be had, because we turned him out of the office of treasurer. But this was clearly within their province. The old ladies put Chafee in. They turned him out. Why not one as well as the other? Again, they say we abrogated a contract. Well, why not; we made the contract, why should we not end it according to its terms? And that contract contained a provision that it shall be abrogated by the Quidnick Company, or by the A. & W. Sprague Manufacturing Company, at thirty days' notice. Why is that wrong? We only did what the contract said we might do. Does Chafee say that was hurtful to the Quidnick Company? No, they say it hurt the A. & W. Sprague Manufacturing Company. The old ladies were not trustees for Chafee, or the A. & W. Sprague Manufacturing Company. What duty did we owe to them?

Do they say we did it hurriedly or oppressively?

May it please your Honors, we gave Chafee notice on the 20th of July that we would terminate the contract in thirty days according to its terms — mark the date — the 20th. His bill alleges that negotiations were had with a committee of creditors, in an endeavor to settle all the questions amicably. While these negotiations were in progress we withdrew that notice and let the contract stand until a new notice of thirty days should be given. The negotiations went on for a considerable period. Before the negotiations began, we undertook to turn him out. This we admit, and as in the case of

the contract, then withdrew our action and let him alone. While these negotiations were pending what do your Honors suppose could have happened? They complain of a multiplicity of suits. We commenced no suits. But on the 20th of July, Wm. J. King, from whom Chafee has bought more than five millions of dollars worth of material, sues the Quidnick Company for a balance of $500,000. Another material man, Henry L. Aldrich, sues for $30,000. The New England Railroad Company for $5,000, and they all attach the Quidnick property, and then the New York creditors, before we had any control of the company, brought their suits for fifty odd thousand dollars, making attachments on the Quidnick Company for material that Chafee bought in New York and used up in the A. & W. Sprague Manufacturing Company of $587,743. And it was because he put the thing in that condition that, all negotiations having failed, we turned him out. At the same time that this property of the Quidnick Company was attached in New York for these debts — at the same moment — the A. & W. Sprague Manufacturing Company, as appears by the books, owed us over $1,200,000 under this contract. All the property that they now say will pay this great amount was under attachment in New York. We thought it was time to turn Chafee out and get somebody in who would pay the material men, or, at least, the waiting help who were unpaid. The selling agent, appointed by our treasurer, Chafee, would not answer the draft of our treasurer, who took Chafee's place, and no money could be had for that purpose, even. We then got together as much money as would pay the help, and paid them. The other moneys were locked up by Chafee's selling agent. May it please your Honors, we say that we wish every debt of the Quidnick Company paid, and we consent that any money in the hands of our agent shall be taken to pay any of the debts of these material men, and I should be glad to have that done.

And because of these acts, and these alone, it is claimed here that these old ladies should have the stigma put upon them that they are not fit to do business which they never

had anything to do with. Your Honors will pause before the justice of Rhode Island, represented by you, will come to such a pass.

They say there must be a receiver of this stock. What for? The old ladies have a pretty firm hold of it. They have not undertaken to sell it to anybody. Chafee is the man who is trying to sell it when it will bring little or nothing. He should not be allowed to sell, because all these doubts are on his title to it. Indeed, he has nothing to sell; he has no certificate to deliver to be canceled or transferred. These debts are property of the Quidnick Company. The attachments were put on by him and by his procurement. He does not deny, but confesses. We say that King is his confederate, and his confederate put an attachment of half a million dollars on the property, and the other material men put on attachments because of the first. Chafee shut down the mills because of these. Having put this mill property in an apparent state of insolvency, he now seeks to sell the stock equivalent to selling the whole property. As these attachments could not stop the machinery, we put their cotton into that machinery and run it out. That is all the property that we have interfered with. We have put skilled men in there, and we must do so to occupy the mill. We are doing that under successful management; having made eleven thousand pieces of goods, for which we shall have to account to whomsoever it may concern. Whose stewardship is the best, Chafee's or the ladies'?

They claim that Mr. Chafee should have the management of this property again. Why didn't he pay the material men then? Why not pay the freight bills — this was before we began the suit. Why didn't he pay? Why not take his advances for this purpose. Can't he get advances, with a million dollars' worth of goods in his selling agent's hands, to pay material men? Is there anything to show that these old ladies did interfere a moment too soon? Put your finger, your Honors, on a single act which they have done which you would not commend.

They say we have declared a dividend. True; so we have. Our expert found upon examination of the business, in conjunction with the expert of the creditors, that there was on hand $425,000, as appeared by the books kept by Chafee, made since Chafee had carried on these Quidnick mills under the contract. He has made no dividend, although the by-laws require that a dividend shall be declared each year when it is earned.

He rendered no account to the stockholders, as by the by-laws he was compelled to do annually, nor when called upon so to do. When it was found that the sum had actually been earned we did make a dividend to those to whom it belonged, and the dividends belong to us on any view. We did not pledge our dividends. All we did pledge was the right to sell our stock as collateral, a naked right to sell only. Even that fact is in contention, as the record of the transfer is made. This question is raised by the demurrer of the Quidnick Company. The demurrer, it is true, admits the facts as pleaded, but the other defendants have by their answers denied the facts of transfer as set up in the bill.

I am willing to bring before the Court the action of Amasa Sprague, William Sprague, Fanny Sprague, Mary Sprague or anybody else of the Sprague family, as to the Quidnick Company, so that the Supreme Court of Rhode Island shall adjudicate upon their doings in the eyes of all the world, and see in what they are wrong. All we ask is that we shall not be interfered with in doing what is right.

What, on the contrary, does Chafee desire to do? The whole burden of the argument on his part is upon the claim of a right to sell that stock now, at the present moment.

Our answer to that is, you have had that stock eight years, as much as you have it now. There were no attachments put on that stock. The lawsuits in Washington did not interfere with Quidnick stock in any way. What is the cause of the present haste? Is it not, Mr. Chafee, that you have been turned out as treasurer for your mismanagement of the concerns of the company, and now you want to sell the stock so that *it*

may be bought by some of your friends, that they may vote upon it and put you back into the management of that company? That is the gist of the whole matter. To this point both of my brothers spoke almost wholly, and scarcely to any other. They spent their whole time upon this question of the stock, and have caused me to say so much as I have said upon the same question.

I submit that the Court will see no occasion, upon these facts, to interfere with the possession of the stock as it now stands in the hands of those who, so far as they are concerned, have managed the stock so well, and by the action of the Court, have the property put back into the hands of one who has managed so ill as Mr. Chafee has done.

Your Honors will observe that I have touched very lightly upon the legal propositions connected with these facts. They have been all so carefully set out by my brother Pryor, in the argument and the brief, that I find nothing to add upon them, but rely upon that argument to show that, upon the plainest principles which govern a court of equity in its decisions, their bill cannot stand.

Apologizing to the Court for the great length of time I have spent on this topic, I now desire to resume the thread of my argument in its chronological order, and bring before the Court what has been done by this trustee with this great estate, that the Court may see whether it is called upon to interfere to do anything to protect him in its possession or give him more power.

I admit that what I have heretofore discussed has been done with some emotion, because I feel pretty strongly and with keenness the injustice of the attack upon my lady clients.

The deed of trust was executed in the manner it was for the purpose of hindering and delaying attachments of the creditors, as we have seen, and no deed of conveyance, whether by mortgage or otherwise, can be sustained in point of law where the intent of its making was to hinder and delay creditors. The deed to the three trustees appointed at

a general meeting of all the creditors, if it had been accepted by the trustees of their choice, might not have been open to such an implication. But the scheme of the creditors had failed, and this new scheme, it is admitted by the answer of Mr. Chafee that we quote, was one not agreed to by any creditor, for none were consulted, and even one of the principal debtors, William Sprague, was not consulted. Mr. Chafee describes that transaction in the following language, admitting all I claim: "Meanwhile many creditors had become dissatisfied with the delay, and it was satisfactorily ascertained that certain creditors holding large claims were preparing to place attachments upon the property, in which case the scheme which had been carefully matured for the conservation of the property for the equal benefit of all the creditors was in danger of being frustrated. In this extremity the officers of the A. & W. Sprague Manufacturing .Company and all the stockholders, with the exception of William Sprague, who had absented himself from the city of Providence during the whole period of the Sprague embarrassment, earnestly solicited this defendant to accept the office of trustee under the mortgage, and, as hereinbefore stated, this defendant complied with such request, and immediately entered upon the discharge of the duties of said office.

Mr. Chafee received the trust notes to the amount of $15,000,000. He has issued $8,000,000 of them.

We now come to the most remarkable change of front in litigation that, in a practice of forty years, I have ever seen. Mr. Chafee now makes a claim, which I will state in his own sworn words in his bill.

"And your orators further show that the great body of the creditors provided for in said trust conveyance, dated Nov. 1, 1873, came in under it and became parties to it, and accepted the mortgage notes as collateral to their original debts, the aggregate amount of the mortgage notes thus issued being upwards of eight million dollars originally issued to four hundred and forty-nine creditors, widely scattered through different parts of the country."

It will thus be seen that he claims that these notes were issued by him as collateral only to the original debt. Unfortunately for us, that is not true. I wish it were so. It would put the Spragues in a very good financial condition if it were true, but it is not true — not a word of it; because if it were, by the terms of the trust deed, every one of these trust notes have been illegally issued, and everybody who took them must be presumed to have known the conditions of the deed under which they were issued, and the notes so taken would be void. The original indebtment, being nearly eight years old, would now be within the statute of limitations. If Chafee could make good what he has sworn to, the Spragues would be nearly or quite clean of debt.

I have said that this sworn claim of Chafee's is not true. I call him as a witness. Mark, the point is whether these notes were issued and accepted as collateral or in payment and extension.

But, before I call my witness, let me see what the trust deed says on that question.

"WHEREAS, the A. & W. Sprague Manufacturing Company, and the said A. & W. Sprague, and said Amasa Sprague and William Sprague individually, are now indebted or under liability primary or secondary, in divers sums of money to divers persons, amounting in the aggregate to about the sum of fourteen million dollars, and which indebtedness and liabilities said parties of the first part are desirous of funding and securing by the conveyance of their estates and properties to said party of the second part, as mortgagee in trust, as hereinafter provided." . . . "And all of which notes have been placed in the hands of said party of the second part, to be by him used and applied to the payment or retiring of such of the present outstanding indebtedness and liabilities aforesaid, as the holders thereof shall, within nine months from the date of these presents, bring in and surrender and discharge, or agree to extend for the term, and according to the provisions of said notes; said notes as so issued by said trustee to be countersigned by him."

The next piece of testimony is Mr. Chafee's answer to the

bill of the creditors in the State Court of Rhode Island, filed in 1878, in which he expressly says in the words following: "These defendants, further answering, say that creditors came in under said trust deed, and accepted the mortgage notes to the amount of $8,722,450."

The next evidence we produce is his admission of the same fact in his answer to the suit of Mary Ann Latham, in the Circuit Court of the United States. It is charged against him in the bill in that case that "the creditors aforesaid af-"terwards accepted, and now hold the extension notes to "which they were entitled in accordance with the provisions "of said conveyance."

In his answer, this being the fifth allegation in the bill, he specifically under oath admits it to be true.

Again, in the very bill, the very litigation in regard to the $350,000, be the same more or less, that the A. & W. Sprague Manufacturing Company owes to the Quidnick Company, he says under oath, as follows:

"Within the period of nine months from the first day of January, 1874, as provided in said trust deed, the said amount of $216,410.88 was delivered by payment to said Quidnick Company, $216,400 in mortgage notes, under the provisions of said trust deed, and by the payment to said Quidnick Company of the balance of $10.88 in cash."

It was necessary in this answer to get rid of the claim that the Quidnick Company had a lien on the A. & W. Sprague Manufacturing Company stock for the amount due them, and therefore Chafee swears that the Quidnick Company was paid its debt by these trust notes, according to the provisions of the trust deed. He is in this answer endeavoring to get rid of the Quidnick lien. And so he swears that the notes were given in payment, according to the provisions of the trust deed.

Why did Chafee act differently, when, as trustee, he was settling the debt of the Quidnick Company to Zechariah Chafee, its treasurer, from what he did with other creditors?

Is it possible that he, as trustee, caused to be outstanding two sets of notes for the same debt, both negotiable and liable to go into the hands of innocent holders, there being no memoranda on either note to show that either was collateral to the other? It would almost appear that he was in collusion with the Spragues when he swears that these notes were issued as collateral to get them out of debt.

Have I not made good my claim that Mr. Chafee is utterly unreliable and untruthful in his sworn testimony?

Having come into possession of the property in December, 1873, let us see what he got into his hands. He got $19,000,000, according to a careful estimate of the committee of creditors made for the purpose of loaning money upon the property, and therefore to be taken to be a close and cash valuation. And it will be observed that the loan did not fail because the creditors did not believe that there was enough property to secure further loan, but because they were afraid of attachments in case the loan was not sufficient to meet all the Sprague debts as they matured.

The apparent debts of the A. & W. Sprague Manufacturing Company at that time were over $11,000,000. But it now turns out upon the sworn testimony of Chafee that he was called upon to issue a little rising $8,000,000 of the trust notes to meet that indebtment. He has paid interest only up to Jan. 1, 1876, amounting to about $1,100,000, which came rom the estate. I say $1,100,000, because, although he paid $1,200,000 in interest, it is charged, and not denied, that he borrowed $100,000 out of the Hoyt estate, for the purpose of paying the interest, for which sum he is now sued by the receiver of that estate.

He still owes, for the material furnished the trust estate by the Quidnick Company, some $200,000, admittedly over and above the product of the contract, and he has brought the Quidnick Company in debt, for which there are attachments upon it, to the amount of about $700,000. And from Jan. 1, 1876, until to-day, he has not paid a single cent to any honest creditor of the Sprague estate at the time of the failure.

But he has bought up, as he does not deny, over a million of the trust notes, some as low as thirteen cents on a dollar. And now he sets forth in his bill, and we set forth in our answer, that he told the Spragues that the estate is so depreciated in value, or so little left of it, that he was willing to take $4,000,000 for it, and the contention between the Spragues and their creditors was whether they could afford to pay more than $3,500,000 for the whole estate now remaining. By the counsel admitted here before your Honors in argument, and some of the committee of creditors who have joined in this bill, it is said that the estate would not pay more than $4,000,000. In God's name, why is it not worth more than $4,000,000? He has had the income of it ever since, and the carry on of the business has been very profitable.

Our answers are full and explicit on this point — what is the present value of the estate in the view of the committee of creditors, and I refer the Court to our answers. Cotton manufacturing property was never so valuable as it is to-day, Upon this showing he has squandered, or permitted to be diverted in some way from this estate, in gross, some $15,000,000. But say there are $5,000,000 not to be accounted for, still there are more than $10,000,000 of depreciation during this more than seven and a half years, and no creditor has got a dollar of his principal, and only four installments of interest. Yet he is in great haste to sell the Quidnick stock now, because he says he wants to pay the creditors. He says that before this there were lawsuits pending which prevented the sale of the estate. But there are lawsuits pending now, and attachments upon the estate. DeWolf, the receiver of the Savings Bank, has an attachment covering it all, in Rhode Island and Connecticut. There is still a case pending in the United States Court against this property in behalf of the Hoyt heirs. It cannot be settled now. Why is it that the property in which these old ladies have a claim must be at first sold?

He blames us for the delay. The Sprague family brought no suit, interfered with him in no way until Mary Ann Latham, in behalf of all the creditors, brought him into the

U. S. Court to account. Immediately upon the filing of his answer, when testimony was about to be taken, Mr. Chafee, for the first time in seven and a half years, called a pretended meeting of the creditors in the city of Providence. And there, at that meeting, at which no man's claim was shown, in which no vote was taken except by a hand vote, by which a committee was chosen to choose a committee to confer with Mr. Chafee, which last committee was never ratified or confirmed by the meeting, and which was voted, as we claim, by the million of dollars of notes which Chafee bought being represented at the meeting. And among the first acts of this committee was the rejection of an offer of forty cents on the dollar for these notes, for $3,500,000 is more than forty cents on eight millions, leaving a margin for the cost of settling the estate, these same notes having been for years hawked about in the market for thirteen cents on the dollar, and bought by Chafee at that price.

Now, what has become of this great estate? It has been sold and squandered in the hands of Mr. Chafee and others, the men who are aiding him in this bill in equity.

Now, may it please your Honors, I ought to make this charge good, because it is a grave accusation. By turning to the bill you will see that there are only three or four creditors behind Mr. Chafee in prosecuting this bill, and the history of some of them we have given in our sworn answer, which is not denied.

If your Honors will turn to the 36th page of the answer to this bill, it will appear that "the property known as the Kennebec mills was advertised by said Chafee for sale. That "Chafee, in confederation with said committee, fixed the "price of said property at $350,000. That at said sale at "auction there was but a single bid, which was the sum fixed "by the committee of creditors; and that the bid was made "and proclaimed to be at said sale in the behalf of Wright, "Bliss & Fabyan, of New York, one member of which firm "was a member of said committee, and fixed the price at

" which he would himself buy the property of said estate, of " which he claimed to be the guardian."

It is further sworn to Francis W. Carpenter, one of the parties to the suit, that said Francis W. Carpenter heretofore bought of said Chafee 132 shares of the stock of the Horseshoe Company, the whole number being 150 shares only, for the sum of $100,000, at private sale; that heretofore the income of said property has been $75,000 a year for a series of years, and that now said property, which said Carpenter so bought of said Chafee, one hundred and thirty-two one hundred and fiftieths ($\frac{132}{150}$), is worth in the market more than a half million dollars. And said F. W. Carpenter signs this bill in his own person, and also as representing the American National Bank, as its president. And that the Globe National Bank, represented by Charles D. Owen, and the National Bank of North America, represented by the same Charles D. Owen, but in what capacity does not appear, was the same Charles D. Owen who bought the property known as the Atlantic Delaine Mills from the receiver of said mills, which mills, through Hoyt, Spragues & Company, were a part of the assets of said trust estate, for $360,000, which estate cost $2,500,000, and is to-day worth at least the sum of $1,800,000.

And these defendants further say that Nelson W. Aldrich and Henry W. Gardner, who are members of the committee of creditors, and with the above majority of said committee, were not original creditors of said A. & W. Sprague Manufacturing Company, or creditors under the trust deed as hereinbefore stated. That said Aldrich and Gardner bought large amounts of the stock of the First National Bank, of which Amasa and William Sprague owned one third, and the A. & W. Sprague Manufacturing Company owed to the said bank at the time of making said trust deed, $700,000, the capital stock of said bank being $600,000; for which $700,000 said bank received $700,000 of the trust notes. And when the trust notes had been depressed by the action of said Chafee to the lowest point, to wit, ten cents on the dollar, said Chafee having entered into a combination with his material

man, William J. King, to get possession of said bank, in order to possess themselves of these $700,000 of trust notes, said Gardner and Aldrich bought a large amount of the stock of said bank, and then, by a vote upon said stock, divided the $700,000 of notes among the stockholders in the proportion of their respective shares as a dividend; and thus said Aldrich and Gardner became the creditors of said trust estate, and in no other way whatever, and without cost to themselves, as they have or could have sold the stock of said bank subsequently for the sum which they paid for it.

And as further ground for said belief, these defendants are informed and believe that when Benjamin G. Chace, one of the defendants, was in conversation with said Aldrich about the complications that must arise if the Quidnick Company was stopped from doing business, and that it might have to make an assignment of its property, to the detriment of the estate, said Aldrich said, "We don't care for that. We want you to embarrass the estate all you can." So these defendants say that they verily believe that the property which ought to go to their creditors, who honestly advanced money for their debts, will be frittered away and sold for a small sum, so that no debts will be paid.

Have I not made good my assertion? These are irrefragible facts. And now, your Honors, you are asked to keep this estate in the hands of this trustee, to be still further squandered, and thus leave the Spragues burdened with debts.

You have heard strong words of vituperation and blame of the Sprague family in this transaction.

It is true they suspended payment, as did thousands of good and true men, in the panic of 1873. Very wrongly advised by those to whom they looked for advice, they put their property into the hands of Mr. Chafee with the result we have seen. What have the Spragues done since? I now speak by the record. In March, 1877, over $4,000,000 in value of honest creditors brought a bill in equity in this Court against Chafee, to have him removed from his office of trustee for malfeasance and misfeasance in office. Chafee, so far as the creditors were

concerned, was a mere volunteer. Nobody had asked him to come into this trust except the debtors, when they were threatened with attachments. He had not a dollar's interest in the concern. He now admits that he has a million dollars or more, as we have seen. One would suppose that, having no interest, being a naked trustee, that when the creditors brought suit against him he would have been eager to get rid of the trust; but he came in and objected, and his objection was that the suits should not be tried, because some of the justices of the Court were unfortunately interested in this estate, as they could not well help being if they were connected with the business of the State of Rhode Island, so that but one justice of the Court could sit in the case, and he very properly refused to sit alone. Mr. Chafee took advantage of this and put the case off, hoping to put it off forever. The report of the committee of creditors upon this condition of things is really plaintive and touching as they recite their endeavors to get justice in Rhode Island, and are unable to do so, which state of things, I am glad to say, does not exist any longer. What then was done? The creditors gave up, and said they could do no more. In the meantime it was found that Mr. Chafee had been disposing of all this large amount of property — substantially all that was not tied up by the suits in Washington and elsewhere. He has disposed of substantially all of the dividend-paying and the best property of the estate, except that which was under attachment. I will not take your Honors' time to enumerate the many different pieces of the estate that Chafee sold — bank stock, Providence Horse Railroad stock, Providence & Fishkill Railroad stock, Washington & Georgetown Horse Railroad stock, Rhode Island Horseshoe Company stock — everything that would bring money that escaped attachment.

Meanwhile he neglected the estate, and an attachment was made by a creditor, the National Bank of Commerce of New York, for a little less than $60,000. Chafee, with all these millions in his hands, allowed that suit to go to judgment, and

levy to be made upon all the real estate in Rhode Island, amounting to millions, to be bid off for a nominal sum, and then a writ of entry to be brought in the United States Circuit Court, and then he bought up and paid all the debt, the claim, interest, and costs, and a bonus besides of about $40,000 to get rid of this levy, taking the money out of the estate, and having the deed made to three other persons in trust for the estate. I doubt whether there can be stated a grosser case of malfeasance in office of a trustee.

Finding that at this rate nothing would be done for the creditors, Mr. William Sprague called a meeting of the creditors. That meeting was held in the office of Mr. Lapham, who was counsel for the creditors in the suit brought by creditors holding $4,000,000 of the notes, in the State Court. At that meeting the question was discussed, and it was decided to bring a suit in the United States Court, provided that some creditor out of the State could be found, who would bring such a suit in behalf of all the creditors, and it was finally decided to use the name of Mary Ann Latham, who was a relative of the Sprague family, and whose name was suggested by Mr. Lapham, because it was necessary to get some person whose claim could not be bought off for a few hundred dollars. A suit was brought in the United States Court, alleging substantially the same causes for the removal of Chafee from his trust as in the creditors' bill in the State Court, a motion was made for a receiver, and denied, until the coming in of the answer. Immediately upon the coming in of the answer, when this matter must be brought to hearing for the removal of this trustee, a meeting of the creditors was held, as I have before stated. Meanwhile Mr. Chafee had endeavored to get rid of the suit in the United States Court by pleading another action pending, to wit, the creditors' bill in the State Court, in bar to the bill in the United States Court, being the same bill which he claimed could not be tried for want of judges. This shows the manner in which he has, by every legal weapon, and by taking every legal ad-

vantage, kept himself in possession of the trust estate, he growing richer and the creditors growing poorer.

We agree that Mr. William Sprague caused a suit to be brought against Mr. Chafee in the Circuit Court to remove him as trustee, according to the wish of $4,000,000 worth of his creditors — all that could be got together — upon the same charges, with some additional ones of which the creditors did not know. Is there anything that looks like bad faith or wrong intention toward his creditors, in William Sprague, when he does this? He only followed their lead, and tried to do what they could not do — get them a hearing in court.

What is the next thing alleged against Mr. William Sprague in this bill? That, finding this estate was depreciated, and wishing to reserve as much as he could for his creditors, he went around among his friends and monied men to get the means of making the largest offer to his creditors for this depreciated estate, squandered in the way I have said, that any expert would say it would sell for at auction, or was a safe price at which to buy it. He made that offer. It is said it was not enough. But William Sprague and his friends could not see their way clear to make a higher offer. A gentleman who had aided him in getting a trust company to take the scheme in charge then made another offer of $3,500,000, agreeing to pay so much in cash, and so much at stated times, to be agreed upon by the committee, and leave the estate to be conveyed by a deed to be held in escrow for security for the payment.

Chafee says in his bill: "Of course we didn't entertain this offer. We did not believe the man who made the offer was a man of much property." But he didn't offer his property; he offered to pay the money. But then, if the committee had not rejected that offer Mr. Bliss of the committee could not have got the Kennebec mills property at his own price, and the others of the committee could not have got the slices of this property which they desired.

It is in testimony that after Mr. Rooney made the offer, however, Mr. Chafee had a conference with him, and sent

for William Sprague's counsel, and wanted an offer made of $4,000,000 by the same man. The counsel refused to advise that offer, and Mr. Chafee says that the counsel threatened him with litigation. That counsel now addresses the Court. He has never been accused of being a fool, and he would have been a fool, when negotiations were going on, to make threats. They say that offer was in the handwriting of the counsel. That seems to have been an offence in the mind of Mr. Chafee. But if he had ever seen the handwriting of the counsel he would have been sure that that offer, and no other legal paper he has seen, was in the handwriting of counsel, because the paper was legible. I trust it was not rejected on that account. Mr. Chafee is contradicted in his account of that transaction, and is the only person who has sworn to it. But then he swore that these notes were issued as collateral security. But he swore the other way three times. He may be laid aside whenever the truth is wanted in a court of justice.

It is also in evidence that before the committee had rejected this offer of $3,500,000, they had made a valuation of the whole property in detail, in which valuation the Kennebec Mills property was put down at $600,000, using the spindle as the unit of value. That valuation of $600,000 went to make up the $4,000,000 which they asked. But when they came to put it up at auction for one of their committee to buy, they made the upset price at $350,000, and sold it to their committee man at that sum. At the same rate of depreciation of the rest of the estate the $4,000,000 valuation would reduce it to about $2,000,000, or $700,000 less than Sprague offered, which the committee rejected, and $1,500,000 less than Mr. Rooney offered, which they rejected.

These are stubborn facts, may it please your Honors.

Here we have Mr. Chafee, and the men associated with him, buying the property of the estate at depreciated prices, Chafee himself buying more than a million of these notes, some of them as low as thirteen cents on the dollar, offering, as is sworn to in the affidavits in the case in the Circuit Court,

for a part of these notes thirteen cents on a dollar only, to a poor man who had a few hundred dollars which he had honestly earned in work against the Sprague estate. And out of these many millions of dollars he has not paid any interest since 1876, to say nothing of never having paid any of the principal, then rejecting an offer for the estate which would pay forty cents on the dollar, and since that offer was rejected, it is in evidence that the same notes have been sold in the market for fourteen cents on the dollar.

Can your Honors doubt what all this means? Does not the Court see what is intended to be done with the estate if the Court can be brought to act in behalf of these men who propose to prey upon it as does a vulture upon a dead carcass?

Will your Honors put back any more of this estate into the hands of the chief of these men, or any one of them? If so, who shall keep the keepers?

Now, may it please your Honors, I have on behalf of my clients, a proposition to make. If Chafee will resign as trustee, then let the A. & W. Sprague Manufacturing Company property as it stands in the trust deed, what is left of it, go into the hands of a receiver,— some honest man, to be appointed by this Court,— let the Quidnick Company stand as it does stand, to be run by those to whom it belongs, accounts to be kept with accuracy, and the matter as to whom the proceeds of its business belong to be settled by this Court upon a final hearing of the whole question. Let every dollar that ought to be paid by the trust estate be accounted for on the one side, and every dollar that ought to be paid by the Quidnick Company to be stated on the other side; that the outstanding debts of the Quidnick Company shall be paid; that the trust estate be wound up as soon as possible, all sales of the real property to be made subject to ratification by this Court.

I have shown to your Honors that the creditors of the Spragues have for four years tried to bring this man Chafee at bay — tried to get him out, tried to have him settle up, as far as might be, this great estate — and failed utterly to make him even offer to do anything, until the Spragues brought

him into the United States Court and into this Court. We claim only what in right; equity and justice belong to us. What belongs to our creditors in right and justice they ought long since to have had, and now ought to have. We have spent both time and money to bring about this result. We only insist that all that fairly belongs to these old ladies in this contract, by which they pledge their property, shall go to them, as in justice and equity it ought to do; and we unite our prayers with the prayers of Chafee — that the creditors may have everything that belongs to the estate. The Quidnick Company does not belong to it, and that is the question to be decided by this Court. If law and justice are against us, then there is an end of it, and we submit.

We invoke the justice of this Court, as we invoke the good opinion of all good men upon our cause.

It is not even charged here that we have sought to do anything except to try our rights in a court of justice.

May I be permitted to say, may it please your Honors, that the harsh language used against my clients is not justifiable. Their great business was, in the language of my brother, "the glory of the State of Rhode Island." I thank him for that phrase, and I also thank him that he had the manliness to stand up in the meeting of creditors and state what all the creditors seemed to assent to, that there was no blame which could be attached to the Spragues for the misfortunes they were under in 1873.

Clearly, they have done nothing against the interests of their creditors since; but, as I have shown the Court, on the contrary, they have endeavored to do everything they could in their interests. They still retain the respect of the people of their State. The elder, Amasa Sprague, now represents his county in the senate, the other stands here trying to rescue his estates from the hands of him who took them when they amounted to $19,000,000, and reduced them to $4,000,000 — to make them available for his creditors, and for no other use whatever.

May it please your Honors, I have brought this case of my

clients into this forum where all must come at last for justice in Rhode Island. I am glad to have brought them here. They never have done anything — indeed, they are not charged with having done anything about this estate in all the allegations of this bill, but to bring the questions involved in it into a court of justice. If our tactics had been for delay, as we have been accused, would we have come at this earliest possible day, laying aside all matters of form, and submitted in this way our claims to your judgment? It is a most complicated case, which requires a most thorough and careful examination of the facts. The facts are not now in any shape to be passed upon in the final determination of the rights of the parties. But we have been brought before you to instruct your conscience whether the thunders of a court of equity by its injunctive powers shall be brought to bear upon these old ladies to take away what is their own. We trust not — no, it cannot be until all the facts shall have been brought before the Court by full evidence so that the exact truth may be known.

In the meantime, these mills may be kept running under the custodian of this Court, in whose hands the Court have placed them, and not improperly. The Court will see that no wrong is done. The Court can at any time be applied to and we will agree, and gladly agree, that the property of the Quidnick Company in New York, if it can be got hold of, shall be used to pay the just debts of these material men; as an example, the New York & New England Railroad Company's freights should be paid. There is no reason why costs should accumulate upon that, while there is money enough in the hands of the selling agent to pay it, and we are ready to do anything that the Court may direct, as to most of those that we deem just claims. But when it comes to the claim of William J. King & Co., for $500,000, for cotton, we shall seek to know the justice, truth, and honesty of the charges for cotton claimed to have been furnished to the Quidnick Company, and we shall not desire to have that claim paid until we have asked what commissions they have

received upon many millions of dollars, because he received the money of the Quidnick Company.

I submit, therefore, there can be no danger to any interest to allow matters to remain as they are.

This whole estate is now in contemplation of law, both sides appealing to the court of equity, as if it were within the four walls of this building. The whole is set down under your Honors' eyes, and under your hands, and nobody can do anything wrong to it or about it now. Please keep it here. That is all we ask, keep it here, and if anybody says there is wrong being done in relation to it, bring that accusation of wrong here to be passed upon. Does this proposition of ours look as if we wanted to run away with the estate, as has been charged? Keep your custodian over us as we run the Quidnick mills, if you think it required, and if the Court is informed that we are doing anything wrong you can hold us to an account. Our property has been in the hands of Chafee for eight years. It is now in a court of equity, and I pray the Court to keep it within its power until all questions are fully heard and finally adjudged — that the estate shall go to the benefit of all persons who have legal and equitable claims upon it, and that it shall not further dwindle and melt away. If Mr. Chafee can find a purchaser for any portion of this estate at a price which he deems sufficient, let him report the facts to the Court, and upon a hearing upon that report the Court may order a sale. And if we think it is proposed to be sold out to a ring, or as the polite phrase is now, a "syndicate," for his own purposes, we can come before your Honors and object, and we shall be heard with the patience and courtesy which has already been shown by your Honors' kindness in this much-litigated case. In any event, the estate will at least be in condition to be honestly administered.

The Court will remember that Mr. Chafee has given no bond. That when he took this trust he was, in comparison to its magnitude, substantially irresponsible in point of property. But we now have him bound by the practice of a

court of equity, and are rejoiced to have him here, unwilling as he has been to come here, and being here I pray the Court to keep him and the estate here.

As to a receiver of this stock, I do not see how a receiver can be appointed, or why he is needed; and the plainest objection to a receiver is that all proceedings by a receiver are likely to be expensive. Let the estate remain where it is, in the hands of the custodian of the Court, so that any one interfering with it can be brought immediately to justice.

I can have no doubt that upon the authorities cited by my learned brother, your Honors will sustain the demurrer to this bill. Then let them amend, and we will answer to it as amended. Then, upon proof, the whole matter shall be finally determined.

Thanking your Honors for the great courtesy you have shown us, which of course is not more than I could have expected from this Court, and for your kind indulgence I renew my thanks.