

(Filed October 27, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

JANE SHAW HEPBURN,
Complainant,

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AND

UNITED WATER, GAS & ELECTRIC
COMPANY, THE PENNSYLVANIA
COMPANY FOR INSURANCE ON
LIVES AND GRANTING ANNUI-
TIES, PHILIP B. SHAW, JOHN
PFEIFFER, G. SCHOFFSTALL,
HARPER T. BRESSLER, W. N.
SNYDER, B. W. FEES AND
CHRISTIANE LONG,
Defendants.

ON BILL, &c.

NOTICE OF APPEAL.

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The defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, hereby appeals from the whole and every part of the final decree made in this Court in the above entitled cause, and particularly that portion thereof which decrees that the complainant was, on October 29, 1915, and still remains the owner of three hundred and forty-nine shares of stock in the United Water, Gas & Electric Company then and theretofore standing in the name of P. B. Shaw upon the books of said Company, and that portion of the decree which enjoins the said United Water, Gas & Electric Company

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from transferring on its books the said shares of stock, or any of them, to this defendant.

Dated October 25, 1916.

GREY & ARCHER,

Solicitors for and of counsel with defendant,
The Pennsylvania Company for Insurance on
Lives and Granting Annuities.

I conceive there is good cause for appeal in the above stated case.

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NORMAN GREY,

Of counsel with defendant, The Pennsylvania
Company for Insurance on Lives and Granting
Annuities.

Service of the within notice hereby acknowledged this
26th day of October, 1916.

BLEAKLY & STOCKWELL,

Solicitors for Complainant.

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Service of the within notice hereby acknowledged this
26th day of October, 1916.

LEWIS STARR,

Solicitor for United Water, Gas & Electric
Company, John Pfeiffer, G. Schoffstall, Harper
T. Bressler, W. N. Snyder, B. W. Fees and
Christiane Long.

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(Filed November 16, 1917.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

JANE SHAW HEPBURN,
Complainant-Respondent,

AND

UNITED WATER, GAS & ELECTRIC
COMPANY, PHILIP B. SHAW,
JOHN PFEIFFER, G. SCHOFF-
STALL, HARPER T. BRESSLER,
W. N. SNYDER, B. W. FEES AND
CHRISTIANE LONG,
Defendants-Respondents,

AND

THE PENNSYLVANIA COMPANY
FOR INSURANCE ON LIVES AND
GRANTING ANNUITIES,
Defendant-Appellant.

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ON BILL.

PETITION OF
APPEAL.

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

The petition of The Pennsylvania Company for Insurance on Lives and Granting Annuities, defendant-petitioner in the above matter, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery of New Jersey, by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the seventeenth day of October, nineteen hundred and sixteen, in this respect: That the said decree adjudges that on October twenty-ninth, nineteen hundred and fifteen, the complainant-respondent, Jane

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Shaw Hepburn, was and still remains the owner of 349 shares of stock of United Water, Gas & Electric Company standing on the books of said Company in the name of P. B. Shaw, defendant-respondent (that said decree affected 350 shares of stock, this petitioner being aggrieved by the decision as to 349 shares thereof) and which decree also enjoins the said United Water, Gas & Electric Company from transferring on its books the said shares of stock, or any of them, to this petitioner, The Pennsylvania Company for Insurance on Lives and Granting Annuities, or anyone other than the complainant-respondent, and your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that:

1. The Court found on the facts that the said complainant became the owner of said 349 shares of stock of United Water, Gas & Electric Company in May, nineteen hundred and fifteen, whereas the Court should have found on the facts that at that time P. B. Shaw was the owner thereof.

2. The Court found on the facts that the said complainant was the owner of said 349 shares of stock of United Water, Gas & Electric Company on October nineteenth, nineteen hundred and fifteen, whereas the Court should have found that P. B. Shaw was the owner thereof on said date.

3. The Court found on the facts that the said complainant was the owner of said 349 shares of stock of United Water, Gas & Electric Company on October twenty-ninth, nineteen hundred and fifteen, whereas the Court should have found on the facts that on said date this petitioner, The Pennsylvania Company for Insurance on Lives and Granting Annuities, was entitled to said shares of stock by reason of an attachment issued October nineteenth, nineteen hundred and fifteen, out of the Court of Common Pleas of Schuylkill County, Pennsylvania, in the suit of The Pennsylvania Company for Insurance on Lives and

Granting Annuities vs. P. B. Shaw, in which suit the said shares were attached as the stock of P. B. Shaw on October nineteenth, nineteen hundred and fifteen, and which stock was thereafter sold to this petitioner, pursuant to the judgment of said Court of Common Pleas of the County of Schuylkill, by the Sheriff of said county.

4. The Court found on the facts that the said stock had been transferred by P. B. Shaw to Jane Shaw Hepburn, complainant-respondent, in good faith and for valuable consideration, whereas on the facts the Court should have found that the said stock had not been transferred by the said P. B. Shaw to Jane Shaw Hepburn, complainant-respondent, in good faith and for valuable consideration in May, nineteen hundred and fifteen. 10

5. The said transfer from the said P. B. Shaw to Jane Shaw Hepburn, complainant-respondent, was in fraud of creditors and the Court should have set aside such transfer if, in fact, it had been made, the said P. B. Shaw being at the time of such transfer insolvent.

6. That said decree is in divers other respects erroneous, oppressive and contrary to equity and good conscience. 20

GREY & ARCHER,

Solicitors for and of counsel with The Pennsylvania Company for Insurance on Lives and Granting Annuities, Defendant-Petitioner.

(Filed November 21, 1916.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BETWEEN

JANE SHAW HEPBURN,
Complainant-Respondent,

AND

10 UNITED WATER, GAS & ELECTRIC
COMPANY, PHILIP B. SHAW,
JOHN PFEIFFER, G. SCHOFF-
STALL, HARPER T. BRESSLER,
W. N. SNYDER, B. W. FEES AND
CHRISTIANE LONG,
Defendants-Respondents,

AND

20 THE PENNSYLVANIA COMPANY
FOR INSURANCE ON LIVES AND
GRANTING ANNUITIES,
Defendant-Appellant.

ON BILL, &C.

ANSWER TO PETI-
TION OF APPEAL.

The answer of the above-named respondent, Jane Shaw Hepburn, to the petition of appeal of the above-named appellant.

30 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 17th day of October, 1916, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

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

Solicitors for Respondent, Jane Shaw Hepburn.

(Filed February 3, 1916.)

IN CHANCERY OF NEW JERSEY.

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

The complainant, Jane Shaw Hepburn, of Villa Nova, in the State of Pennsylvania, respectfully shows that:

1. The United Water, Gas & Electric Company is a corporation of the State of New Jersey, with its principal office in this State, located at the southwest corner of Fourth and Market Streets, Camden, New Jersey; that Lewis Starr is the registered agent of the said Company, at said office in this State. 20

2. That on April 29, 1910, there were issued by said United Water, Gas & Electric Company, for a valuable consideration, to P. B. Shaw, five certain certificates of stock in said Company, as follows: No. 44 for 100 shares; No. 45 for 100 shares; No. 46 for 50 shares; No. 47 for 50 shares; No. 48 for 49 shares.

3. That in the early part of May, 1915, the said P. B. Shaw assigned, transferred and set over unto this complainant, for a good and valuable consideration, the said certificates of stock, and from that day until the present time this complainant has continued to be, and still is the sole and lawful owner and possessor of the said 349 shares of stock in said corporation. 30

4. That on June 23, 1915, said shares of stock had not been transferred to this complainant on the stock transfer book of the said corporation, said certificates being held

and possessed by this complainant in the same negotiable condition as when transferred to her in May, 1915, as aforesaid.

5. That this complainant, in June, 1915, was and still is also the owner of one share of the capital stock of the said corporation, represented by certificate No. 39, dated December 15, 1904, made out to the said Lewis Starr and by him endorsed in blank; which certificate now is and for a long time past has been owned and possessed by this complainant, although never transferred to her on the
10 books of the Company.

6. That on the twenty-third day of June, 1915, this complainant, being the owner and possessor of 350 shares of the capital stock of the said United Water, Gas & Electric Company, as aforesaid, made and entered into a certain agreement with Benjamin W. Fees, Harper T. Bressler and others, in reference to the sale of the said 350 shares of stock owned by her; a true copy of which agreement, marked Exhibit C-1, and made a part of this bill
20 is hereunto annexed.

7. That the said Benjamin W. Fees then was and still continues to be the President and one of the Directors of the said United Water, Gas & Electric Company; that Harper T. Bressler, on June 23, 1915, was and still continues to be the Secretary and one of the Directors of the said United Water, Gas & Electric Company, and the said United Water, Gas & Electric Company, on the twenty-third day of June, 1915, was fully aware and cognizant of the facts above set forth, in relation to the ownership
30 by this complainant of said 350 shares of its capital stock.

8. That on or about October 29, 1915, this complainant caused to be served upon Harper T. Bressler, the then Secretary of the said United Water, Gas & Electric Company, a notice signed by this complainant, advising the said Secretary of her ownership of said stock, and demanding the issuance of new certificates therefor, in her name; a true copy of which said notice is hereto annexed and made a part of this bill and marked Exhibit C-2.

9. That on or about October 29, 1915, this complainant caused to be served on Benjamin W. Fees, the then President of said Corporation, a similar notice and demand, bearing same date.

10. That on or about October 29, 1915, this complainant caused to be served on said United Water, Gas & Electric Company, at its principal office, southwest corner of Fourth and Market Streets, a similar notice and demand.

11. That William W. Hepburn, a duly authorized agent of this complainant, on June 2, 1915, made a certain arrangement with the said Harper T. Bressler, Benjamin W. Fees and others, as set forth in a letter addressed by them to said William W. Hepburn on that date, by which they agreed to purchase from the said William W. Hepburn, representing this complainant, 380 shares (including said 350 shares owned by this complainant) of the capital stock of the United Water, Gas & Electric Company for the sum of \$8,700.00 or a proportionate price for the delivery of 350 shares, which said \$8,700.00 was to be paid to the said William W. Hepburn out of certain moneys to be received through a proposed sale of the capital stock of the Sterling Consolidated Electric Company, for which the said Harper T. Bressler and others on the same date, to wit, June 2, 1915, authorized the said William W. Hepburn to arrange a sale. That said sale, pursuant to said letter of June 2, 1915, and pursuant to said agreement of June 23, 1915, was about to be completed and a fund of \$8,700.00 was created for this purpose for the benefit of this complainant as the owner of 350 shares of the capital stock of the said United Water, Gas & Electric Company. That the Pennsylvania Company for Insurance on Lives and Granting Annuities was Trustee of said fund of \$8,700.00. That on September 10, 1915, the said Pennsylvania Company for Insurance on Lives and Granting Annuities had in its hands as such Trustee the sum of \$8,700.00, 350/380ths of which belonged to this complainant.

ant, and which was to be turned over to this complainant on the happening of certain events. This complainant charges that the said Pennsylvania Company for Insurance on Lives and Granting Annuities, although well knowing that the said \$8,700.00 or 350/380ths thereof belonged to this complainant and although well knowing that the said certificates of stock above mentioned belonged to this complainant as hereinbefore set forth, endeavored, as hereinafter set forth, to prevent the completion of the terms of said arrangement made on behalf of this complainant for the sale of said stock, and notwithstanding the fact that it was the Trustee of said fund, unlawfully attempted, as hereinafter set forth, to get possession of said stock and said fund for its own use and benefit against the interest of this complainant, its cestui que trust. That on September 10, 1915, the said Pennsylvania Company for Insurance on Lives and Granting Annuities caused to be sent and delivered to the said Benjamin W. Fees and others a letter admitting said Trusteeship; a copy of which said letter is hereto annexed and made a part hereof and marked Exhibit C-3.

12. That on or about the nineteenth day of October, 1915, at the instance of the Pennsylvania Company for Insurance on Lives and Granting Annuities a writ of attachment sur-judgment issued out of the Court of Common Pleas of Schuylkill County against said P. B. Shaw, as defendant, the said United Water, Gas & Electric Company, garnishee, in the matter of the Pennsylvania Company for Insurance on Lives and Granting Annuities against P. B. Shaw, to number 340, November Term, 1915, in said Court, wherein and whereunder an attempt was made to attach the 349 shares of stock owned by this complainant and represented by said certificates numbers 44, 45, 46, 47, and 48, as aforesaid, then still standing upon the books of the said Corporation in the name of P. B. Shaw, but owned and possessed by this complainant as aforesaid. That service of said writ, as your complain-

ant is informed and believes, was made upon Harper T. Bressler, Secretary and one of the directors of the said United Water, Gas & Electric Company, or Benjamin W. Fees, the President of said Company, both of whom resided within the said Schuylkill County, and interrogatories to the garnishee having subsequently been filed and answer thereto made by the said Benjamin W. Fees, as President of and for and on behalf of the said United Water, Gas & Electric Company, judgment was in due course entered against the garnishee under said writ and upon or about the fourteenth day of December, 1915, a sale was attempted to be had by the Sheriff of Schuylkill County, Pa., of the 349 shares of stock standing on the books of the United Water, Gas & Electric Company in the name of the said P. B. Shaw, but in fact owned and possessed by this complainant as above set forth. That at the same time a sale was had under said attachment proceedings of 30 shares of stock in the said Company, standing on the books of the Company in the name of P. B. Shaw as follows: Certificate No. 32, 15 shares; Certificate No. 36, 5 shares; Certificate No. 37, 10 shares. That an alleged sale, complainant is now informed, was made of her 349 shares of said stock by the said Sheriff, to the said Pennsylvania Company for Insurance on Lives and Granting Annuities, the plaintiff in the said writ or its representative acting for and on its behalf, and said Pennsylvania Company for Insurance on Lives and Granting Annuities now claims to own said stock.

13. And complainant avers that the United Water, Gas & Electric Company had not then, and has not since the said attachment proceedings, complied with the provisions of the laws of the Commonwealth of the State of Pennsylvania, relative to the registration of foreign corporations doing business in this State; that the said Company was not and still is not authorized to transact business within the Commonwealth of Pennsylvania; that it then had not and now has no office in the State of Pennsylvania and transacts no business there.

14. The complainant is advised by counsel, and, therefore, avers that the said Court of Common Pleas of Schuylkill County, Pennsylvania, was wholly without jurisdiction in the premises insofar as the proceedings against the United Water, Gas & Electric Company, as garnishee, are concerned, and service of said writ of attachment, execution upon said garnishee and judgment thereunder entered, and all of said proceedings thereunder and thereafter had, were and are null, void and wholly without any legal force and effect.

10 15. That on the fifth day of November, 1915, this complainant caused to be served on said United Water, Gas & Electric Company, through its attorney, Carroll R. Williams, at his office, No. 1112 Stephen Girard Building, Philadelphia, Pennsylvania, a notice of said ownership and a demand for said transfer. Coupled with which said notice and demand was a tender on the part of this complainant, to give to the said United Water, Gas & Electric Company a bond of the Fidelity & Deposit Company, a duly authorized surety company, in such amount
20 as might be agreed upon, conditioned for the return of the new certificates to be issued to this complainant in place of the above certificates, in the event that the said Pennsylvania Company should prevail in its then present attachment proceeding. This tender was made by complainant in order to fully protect the said United Water, Gas & Electric Company against any loss it might suffer by reason of transferring on its books the said stock to this complainant, and issuing new certificates in lieu of the above certificates held by this complainant. That the
30 said Harper T. Bressler, in response to said demand of November 5, 1915, addressed a letter to the said Carroll R. Williams, under date of Tower City, Pennsylvania, November 9, 1915, a copy of which letter is hereto annexed and made a part hereof and marked Exhibit C-4. That said letter was delivered to the attorney of this complainant in his office in Philadelphia by the said Carroll

R. Williams, in the presence of the said Bressler, and the statements in said letter were then and there admitted and reiterated by the said Harper T. Bressler to and in the presence of counsel for the complainant. That after said service on the said United Water, Gas & Electric Company, the said Bressler, as Secretary of the said Company, both orally and by letter aforesaid, refused to comply with complainant's demands, notwithstanding plaintiff's tender and offer to fully protect the said United Water, Gas & Electric Company against any loss or damage by reason of issuing new certificates to this complainant in lieu of the above certificate, held by her as aforesaid. 10

16. That on the eleventh day of January, 1916, this complainant again caused a notice and demand to be served upon and a tender made to said United Water, Gas & Electric Company, by delivering said notice, demand and tender to Lewis Starr, the registered agent of the said Corporation in the State of New Jersey, at its office, southwest corner Fourth and Market Streets, Camden, New Jersey, in which it was set forth that this complainant was the owner, as aforesaid, of the said 349 shares of stock and of the said one share of stock, making a total of 350 shares, and demanding that new certificates should be issued to this complainant in lieu of said other certificates, which this complainant then and there offered to deliver up for cancellation, and in and by which the complainant also tendered a bond of the said Fidelity & Deposit Company in the sum of \$16,000.00, double the market and actual value of said stock, indemnifying the said United Water, Gas & Electric Company against any loss by reason of the issuance of the said new shares of stock of this complainant, as against any claim or claims of the said Pennsylvania Company for Insurance on Lives and Granting Annuities or anyone claiming ownership of said shares, by, from, through or under it, and pursuant to said attachment proceedings or otherwise; a copy of which notice, demand and tender is hereto annexed and made a part hereof and marked Exhibit C-5. 20 30

17. That notwithstanding said notices, demands and tenders of a bond of indemnity, the said United Water, Gas & Electric Company has refused and still refuses to properly transfer on its books to this complainant the said shares of stock for which she holds the certificates duly assigned to her as aforesaid.

10 18. That the said United Water, Gas & Electric Company, on October 19, 1915, was a corporation of the State of New Jersey, and its status in the State of Pennsylvania then was and still is that of a foreign corporation, and that neither on the twenty-third day of June, 1915, had nor at any time since that time has it complied with the laws of the State of Pennsylvania in relation to foreign corporations doing business in that State.

19. That the alleged attachment of the said shares of stock and all of said proceedings in the State of Pennsylvania, and the alleged sale of stock pursuant thereto, as above set forth, are absolutely void and of no lawful force or effect.

20 20. That any interest which the said Pennsylvania Company for Insurance on Lives and Granting Annuities has or claims to have in the said stock is subject to the ownership and claim of this complainant.

30 21. That the said Pennsylvania Company for Insurance on Lives and Granting Annuities, while having in its possession the said fund of \$8,700.00, as Trustee for its cestui que trust, this complainant, grossly abused said trust, and in order to protect a claim of its own as against the interest of this complainant, its cestui que trust, caused to be instituted said attachment proceedings, by means of which this complainant has been hindered from securing a transfer of the said shares of stock and from completing a sale thereof and carrying out the agreement above set forth; that the actions of the said Pennsylvania Company for Insurance on Lives and Granting Annuities are inequitable, fraudulent and in bad faith as against this complainant, its cestui que trust.

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

1. That the United Water, Gas & Electric Company and the Pennsylvania Company for Insurance on Lives and Granting Annuities, who are the defendants in this suit, may answer this bill of complaint without oath, and each statement therein made.

2. That it may be decreed that the said Pennsylvania Company for Insurance on Lives and Granting Annuities has no right, title, interest or estate in or to the said shares of stock, or the said fund of \$8,700.00, except to hold and dispose of said fund as Trustee for and under the direction of this complainant. 10

3. That the said United Water, Gas & Electric Company may be decreed to properly transfer to this complainant, on its books, the said 350 shares of stock represented by certificates 39 and 44 to 48 inclusive, above set forth, and issue new certificates therefor to this complainant.

4. That the said United Water, Gas & Electric Company may be enjoined from transferring on its books the said shares of stock or any of them to the said Pennsylvania Company for Insurance on Lives and Granting Annuities or to any person claiming title thereto, by, from, through or under said attachment proceedings, or otherwise. 20

5. That complainant may have such other or further relief in the premises against the said defendants as this Court shall deem equitable and just.

6. That a writ of subpoena may issue, commanding these defendants to answer this complaint and abide by such decree as this Court may make in the premises. 30

BLEAKLY & STOCKWELL,
Solicitors for and of Counsel with Complainant.

EXHIBIT C-1.

AGREEMENT made and concluded this June 23 day of A. D. 1915 by and between Jane Shaw Hepburn, residing at Villa Nova, Pennsylvania, party of the first part, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christina Long, all of Tower City, Pennsylvania, parties of the second part. WITNESSETH :

- 10 Whereas the party of the first part owns 380 shares of the capital stock of the United Water, Gas & Electric Company, a Corporation of the State of New Jersey, which the parties of the second part have agreed to purchase upon the terms and conditions hereinafter stated.

NOW THIS AGREEMENT WITNESSETH :

1. The party of the first part agrees to sell and deliver to the parties of the second part 380 shares of the capital stock of the United Water, Gas & Electric Company for the price or sum of eight thousand seven hundred dollars (\$8,700) or a proportionate part of eight thousand seven hundred dollars (\$8,700) for the delivery of but 350 shares of said company; and the parties of the second part agree to buy said stock upon the said terms.

2. The said consideration for the said stock is to be paid to the party of the first out of the moneys to be received through the proposed sale by the parties of the second part of the capital stock of the Sterling Consolidated Electric Company and at the time of the final settlement for said stock.

- 30 In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Witness	JANE SHAW HEPBURN.	[SEAL]
W. W. HEPBURN.	G. SCHOFFSTALL.	[SEAL]
LUTHER HORN.	HARPER T. BRESSLER.	[SEAL]
RAY SHOWER.	CHRISTIANE LONG	[SEAL]
ADOLPHINA LONG.	JOHN PFEIFFER.	[SEAL]
J. B. WHITWORTH.	B. W. FEES.	[SEAL]
	W. N. SNYDER.	[SEAL]

EXHIBIT C-2.

Philadelphia, Pa., October 29, 1915.

MR. HARPER C. BRESSLER,
Secretary United Water, Gas & Electric Co.,
Tower City, Penna.

DEAR SIR:

Please take notice that I am the holder and sole owner of the following certificates of the capital stock of the United Water, Gas & Electric Company and the stock thereby represented, viz: 10

- Certificate No. 44 for 100 shares
- Certificate No. 45 for 100 shares
- Certificate No. 46 for 50 shares
- Certificate No. 47 for 50 shares
- Certificate No. 48 for 49 shares

The said certificates all having been issued in the name of P. B. Shaw, who for a valuable consideration duly sold and assigned, transferred and delivered the same to me upon or about the first day of May, 1915, since which time the same have been in my possession as the owner thereof. I shall demand the issuance of new certificates therefor, in my name and to me, upon the surrender of the above certificates. And you are hereby notified that I shall hold your Company responsible for any and all loss or damage sustained by me through or by reason of any disposition made or suffered by you of such stock, except under authority in writing by me given therefor. 20 30

Yours truly,
(Signed) JANE SHAW HEPBURN.

EXHIBIT C-3.

September 10, 1915.

MESSRS. JOHN PFEIFFER, G. SCHOFFSTALL,
 HARPER T. BRESSLER, W. N. SNYDER,
 B. W. FEES AND CHRISTIANE LONG.
 Tower City,
 Pennsylvania.

10 DEAR SIRs:

We beg to advise you that we have on deposit in a Special Account the sum of \$8,700.00, which is to be paid over by us upon satisfactory evidence from you that all of the things required to be done by P. B. Shaw and Jane Shaw Hepburn and yourselves, under agreements dated the 23rd day of June and the 5th day of June, 1915, have been completed, whereupon we are to turn over the said \$8,700.00 to Jane Shaw Hepburn.

Yours very truly,

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(Signed) C. S. NEWHALL,
 Treasurer.

EXHIBIT C-4.

HARPER T. BRESSLER.

Tower City, Pa., Nov. 9, 1915.

CARROLL R. WILLIAMS, Esq.

30 DEAR SIR:

Yours of the 6th came to hand and was submitted to my associates for their consideration before answering it.

We cannot see our way clear to do what Mr. C. J. Hepburn suggests, as we feel that we have done all that we agreed to do in the agreements and stand ready to carry out anything more that may be needed to complete the transaction.

It is no fault of ours that the matter has taken its present form; the placing of the money with the Penna. Co. being at the suggestion of W. W. Hepburn because he was not ready with the consent of all the banks holding the bonds of the United Co. as contemplated in the agreement providing for the sale of the Sterling Co. and the agreements with Mr. Shaw and Mrs. Hepburn.

We feel that if we would accept a bond and ignore the attachment of the Penna. Co. we would put ourselves into position that would invite a law suit, and we think that some of the pending suits had better be settled before any more are invited. 10

I wrote Mr. W. W. Hepburn on Oct. 2nd, asking him to go ahead and have the other matters, covered by the agreements, attended to, but up to this time have not heard from him except through you by way of C. J. Hepburn and by the same route I want to say that we have fully complied with the terms of the agreements with Mr. Shaw and Mrs. Hepburn, viz: We have deposited at the suggestion of W. W. Hepburn with the Penna. Co. \$8,700.00 in cash and the two agreements, with instructions that as soon as the agreements are complied with the money should be paid to Mrs. Hepburn; we also have delivered to the Penna. Co. the formal consent of the Dauphin County Court to the settlement of the equity suit in that county and have instructed you to settle the suit in Phila. whenever you would be advised that the several suits instituted by Mr. Shaw have been settled. 20

The agreement with Mr. Shaw expressly provides that he shall settle the suits *before* payment is made and we want it done that way. 30

Up to this time we have no information that anything has been done except to demand from us payment for the stock and unless all the things that were intended are done we will not agree that the Penna. Co. shall make payment for the stock.

We feel that we are not interested in the question of the ownership of the stock, as the matter stands at present, and do not feel that we should do anything in the matter, except such matters as arise out of the attachment proceedings wherein we have made answer to the interrogatories, a copy of which is enclosed herewith for your information.

10 I had asked the Prothonotary to mail you copy of the docket entries but as you say they have not been received I enclose herewith copy of the notice that was served on me by the Sheriff.

The only thing that I see in the matter is for Hepburn to complete his part of the arrangement and let the courts determine the ownership of the stock when a proper delivery can be made to us and the money paid.

We think that we have done more than was contemplated when the arrangement was made and do not see that the arrangement suggested by Mr. Hepburn would do anything but add to the muddle.

20 If there is anything that you wish to be informed on in this matter please advise me.

Yours truly,

HARPER T. BRESSLER.

EXHIBIT C-5.

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Camden, N. J., January 8, 1916.

TO UNITED WATER, GAS & ELECTRIC COMPANY,
Southwest corner Fourth and Market Streets, Camden,
N. J.

And to Lewis Starr, its registered agent:

PLEASE TAKE NOTICE that the undersigned is the holder and sole owner of the following certificates of the capital

stock of the United Water, Gas & Electric Company, represented as follows:

Certificate No. 39 for 1 share.
 Certificate No. 44 for 100 shares.
 Certificate No. 45 for 100 shares.
 Certificate No. 46 for 50 shares.
 Certificate No. 47 for 50 shares.
 Certificate No. 48 for 49 shares.

making a total of 350 shares.

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Said certificates, duly transferred by legal power of attorney, are herewith presented for cancellation.

The demand is hereby made that new certificates be issued in the place and stead of the above certificates for 350 shares of stock to the undersigned.

A tender is hereby made of the bond of the Fidelity & Deposit Company, a duly authorized surety company, in the sum of \$16,000.00, being double the market and actual value of said stock, indemnifying said United Water, Gas & Electric Company against any loss by reason of the issuance of the said new certificates to the undersigned, in place of the above certificates herewith tendered for cancellation, as against any claim of the Pennsylvania Company for Insurance on Lives and Granting Annuities, or anyone claiming by, from, through or under it, pursuant to certain Pennsylvania attachment proceedings or otherwise. If the said Fidelity & Deposit Company is not deemed by you to be a sufficient surety, or if the said \$16,000.00 is not a sufficient amount of indemnity, the undersigned hereby agrees to have executed and delivered to you by any other reliable surety company which you may name or designate, a proper bond in such reasonable amount of indemnity as you may deem proper and as you may forthwith designate in writing to the undersigned.

Witness

W. P. HEPBURN. (Signed) JANE SHAW HEPBURN.

(Filed July 27, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

JANE SHAW HEPBURN,

Complainant,

AND

10 UNITED WATER, GAS & ELECTRIC
COMPANY, ET ALS.,

Defendants.

ON BILL, &C.
ORDER AMENDING
COMPLAINANT'S
BILL.

Application for this purpose having been made in open court, in the presence of Lewis Starr, Esquire, of counsel with United Water, Gas & Electric Company; Grey & Archer, Esquires, counsel for The Pennsylvania Company for Insurance on Lives and Granting Annuities, and Bleakly & Stockwell, Esquires, counsel for the complainant, and the Court being of the opinion that the complainant's bill should be amended so as to bring in as parties defendant the following Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long:

20 It is thereupon ordered, on this 25th day of July, 1916, that complainant's bill be, and the same is hereby amended as follows:

1. Substitute for paragraph 1, page 10, of said bill, the following:

30 "That the United Water, Gas & Electric Company, The Pennsylvania Company for Insurance on Lives and Granting Annuities, Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, who are the defendants in this suit, may answer this bill of complaint without oath, and each statement therein made."

2. Substitute for paragraph 2, page 10, the following:

“That it may be decreed that the said Pennsylvania Company for Insurance on Lives and Granting Annuities, Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long have no right, title, interest or estate in or to the said shares of stock.”

E. R. WALKER.

E. B. LEAMING,
V. C.

10

We consent to the entering of the foregoing order.

LEWIS STARR,

Solicitor for and of Counsel with United
Water, Gas & Electric Company.

GREY & ARCHER,

Solicitors for and of Counsel with The Penn-
sylvania Company for Insurance on Lives and
Granting Annuities.

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(Filed April 12, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN		} ON BILL, &c. ANSWER IN LIEU OF PLEA.
	JANE SHAW HEPBURN,	
	Complainant,	
	AND	
10	UNITED WATER, GAS & ELECTRIC COMPANY, ET ALS.,	
	Defendants.	

This answer of United Water, Gas and Electric Company, in lieu of plea:

1. Admits the facts set forth in paragraphs one and two.
- 20 2. Avers that it has no such knowledge, information or belief, as to the facts set forth in paragraph three, as to make answer thereto.
3. Admits that on June 23, 1915, the shares of stock referred to in paragraph three of said bill were not transferred on the stock transfer book of defendant to the complainant, but, as to the remaining facts stated in paragraph four, this defendant has no such knowledge, information or belief as to make answer thereto.
- 30 4. Avers that it has no such knowledge, information or belief, as to the facts set forth in paragraph five of said bill of complaint, as to make answer thereto, but admits that certificate No. 39 of defendant was made out in the name of Lewis Starr, and has never been transferred on its books.
5. Avers that defendant has no such knowledge, information as to the facts set forth in paragraph six of said bill as to make answer thereto, but believes that some of the

officers and directors of defendant were interested in the agreement referred to therein.

6. Admits that Benjamin W. Fees was and still continues to be President and one of the Directors of the defendant, and that Harper T. Bressler, on June 23, 1915, was and still continues to be Secretary and one of the Directors of defendant, but avers that this defendant has no knowledge, information or belief as to whether the said Fees and Bressler were aware and cognizant of the alleged ownership of the complainant in the shares of stock referred to in paragraph seven. 10

7. Denies that defendant, as a corporation, was fully aware and cognizant of the facts set forth in paragraph seven, of the ownership by the complainant of said shares of stock.

8. Admits the facts set forth in paragraph eight.

9. Admits the facts set forth in paragraph nine.

10. Admits the facts set forth in paragraph ten.

11. Avers that, as to the facts set forth in paragraph eleven, this defendant has no such knowledge, information or belief as to make answer thereto. 20

12. Admits that on or about the 19th of October, the defendant, Pennsylvania Company for Insurance on Lives and Granting Annuities, issued a writ of attachment against P. B. Shaw as defendant and this defendant as garnishee, out of the Court of Common Pleas of Schuylkill County, in the State of Pennsylvania, but has no such knowledge, information or belief as to the proceedings taken in such attachment suit, as alleged in paragraph twelve of said bill of complaint, as to make answer thereto, except that the interrogatories addressed to this defendant were filed and answered by Benjamin W. Fees, President of this defendant, and that at the time of such alleged attachment, the shares of stock referred to in said paragraph stood on the books of this defendant in the name of P. B. Shaw. 30

13. Admits that at the time of the attachment proceedings aforesaid, defendant was not registered in Pennsylvania as a foreign corporation doing business in that State.

14. Avers that it has no such knowledge, information or belief, as to whether or not it was authorized to transact business in Pennsylvania, or whether it had an office in said State, and transact business therein at the time of the institution of said attachment proceedings as to make answer thereto.

10 15. Avers that it has no such knowledge, information or belief as to the allegations contained in paragraph fourteen of said bill as to make answer thereto.

16. Admits the facts set forth in paragraph fifteen of said bill of complaint.

17. Admits the facts set forth in paragraph sixteen of said bill of complaint.

18. Admits the facts set forth in paragraph seventeen of said bill, and avers that it was justified, because of the dispute as to the ownership of the stock, in refusing to transfer the stock of the complainant.

19. Admits that defendant was, on October 19, 1915, a corporation of the State of New Jersey, and that its status in the State of Pennsylvania was that of a foreign corporation, and also admits that on the 23d day of June, 1915, it was not registered in Pennsylvania as a foreign corporation, but avers, whether or not it had complied with the laws of the State of Pennsylvania, it has no such knowledge, information or belief as to make answer to that portion of paragraph eighteen as alleges that it had not complied with the laws of the State of Pennsylvania.

20. Avers it has no such knowledge, information or belief as to the allegations contained in paragraphs nineteen, twenty and twenty-one of said bill as to make answer thereto.

21. Avers that defendant, as a corporation, has no interest or concern in the controversy between the complainant and The Pennsylvania Company for Insurance on Lives and Granting Annuities, with relation to the ownership of the said stock, other than to transfer the same on the books of the defendant to such person as may be entitled thereto when such ownership may be judicially determined.

22. Avers that the defendant was not interested in the agreement made between the complainant and Harper T. Bressler, Benjamin W. Fees and others referred to in paragraph eleven of the bill of complaint, but believes that certain persons, who are Directors and stockholders of the defendant, are interested therein, and that the fund deposited with the Pennsylvania Company, as referred to in said bill, belongs to such persons. 10

23. Submits itself to the jurisdiction of the Court, for the purpose of performing any decree with reference to the transfer of the shares of stock referred to therein as may be made in favor of or against any of the parties thereto. 20

LEWIS STARR,
Solicitor for and of Counsel with United
Water, Gas & Electric Company.

(Filed July 1, 1916.)

IN CHANCERY OF NEW JERSEY.

	BETWEEN		ON BILL &C.
	JANE SHAW HEPBURN,	}	ANSWER AND COUN-
	Complainant,		TERCLAIM OF THE
	AND	}	PENNSYLVANIA
10	UNITED WATER, GAS & ELEC-		COMPANY FOR
	TRIC COMPANY, ET ALS.,		INSURANCE ON
	Defendants.		LIVES AND GRANT-
			ING ANNUITIES.

The answer of The Pennsylvania Company for Insurance on Lives and Granting Annuities.

This defendant, answering the bill of complaint, says that:

- 20 1. Paragraph 1 is admitted.
2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 2, except that on October 18, 1915, there were standing on the books of United Water, Gas & Electric Company 379 shares of the capital stock of the said company, in the name of one P. B. Shaw.
3. Paragraph 3 is denied.
4. This defendant avers that at no time have said shares of stock been transferred to complainant on the
- 30 stock transfer books of said corporation. This defendant denies that said certificates were transferred to complainant in May, 1915, or at any other time.
5. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 5.
6. This defendant admits the execution of an agreement referred to in paragraph 6, but says that it was

entered into and executed by complainant acting for and in behalf of P. B. Shaw, the father of complainant, and for his sole benefit; defendant leaves complainant to her proof that Exhibit C is a true copy of said agreement.

7. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 7.

8. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 8.

9. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 9. 10

10. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 10.

11. This defendant denies that the arrangement referred to in paragraph 11 set forth in a letter from Harper T. Bressler and others, dated June 2, 1915, was entered into by the said William W. Hepburn acting for and in behalf of complainant, and avers that said William W. Hepburn was acting as agent for and in behalf of P. B. Shaw for his sole benefit, said P. B. Shaw being the owner of said shares of stock. A copy of said letter of June 2, 1915, is attached hereto and marked Exhibit D-1. 20

This defendant denies that it was trustee of said fund of \$8,700, and denies that said fund or any part thereof belonged to complainant. This defendant admits that it received said fund of \$8,700, and that under date of September 10, 1915, the treasurer of this defendant sent to Benjamin W. Fees and others a certain letter, of which Exhibit C-3 is a copy. For further answer to said paragraph 11, this defendant refers to paragraph 12 of this answer. 30

12. This defendant says that on October 19, 1915, it caused to be issued a writ of attachment execution to

number 340, November Term, 1915, in the Court of Common Pleas of Schuylkill County, Pennsylvania, against the said P. B. Shaw, with notice to the defendant United Water, Gas & Electric Company, as garnishee, which attachment was based upon a judgment obtained in said court, September 8, 1915, to number 23, November Term, 1915, by this defendant against the said P. B. Shaw for \$93,693.94, with interest. That pursuant to said writ of attachment, the sheriff of said county, on October 18, 1915, levied on the said shares of stock standing in the name of the said P. B. Shaw on the books of the said defendant United Water, Gas & Electric Company. That the said writ of attachment was duly served upon the defendant United Water, Gas & Electric Company as garnishee, and in its answer to certain interrogatories filed by this defendant and served on said defendant United Water, Gas & Electric Company, said company admitted that said stock stood in the name of the said P. B. Shaw on the books of the said company; whereupon, on November 15, 1915, judgment was entered for this defendant upon the answers filed by said United Water, Gas & Electric Company as garnishee, in which judgment it was declared that there is standing on the books of the said company the said shares of stock belonging to the said P. B. Shaw, with the right in this defendant to proceed by execution on its said judgment number 23, November Term, 1915, for \$93,693.94, with interest against the said P. B. Shaw, and to sell as many of said shares as might be necessary be necessary to satisfy the said judgment. That on November 17, 1915, this defendant issued a writ of fieri facias on the said judgment against the said P. B. Shaw, with directions to levy on said stock standing on the books of the said United Water, Gas & Electric Company as aforesaid, in the name of the said P. B. Shaw, and to seel as many of said shares as might be necessary to satisfy the said judgment against said P. B. Shaw. That pursuant to said writ of fieri facias, the said sheriff

of Schuylkill County, Pennsylvania, advertised and sold at public sale the said stock on December 14, 1915, to this defendant, the plaintiff therein, and delivered a bill of sale therefor. This defendant denies that said stock was ever owned by complainant. This defendant admits that it now claims to own said stock, and avers that by virtue of the premises the title to said stock is in it.

13. Answering paragraph 13 of the complaint, this defendant avers that said United Water, Gas & Electric Company, in the year 1900, complied with the laws of the State of Pennsylvania with respect to the registration of foreign corporations transacting business therein. 10

14. This defendant says that it is advised by counsel and therefore avers that the Court of Common Pleas of Schuylkill County, Pennsylvania, had jurisdiction in the premises and that the proceedings referred to in said paragraph 14 were legal.

15. This defendant avers that it has no such knowledge, information or belief as to the facts set forth in paragraph 15 as to make answer thereto. 20

16. This defendant avers that it has no such knowledge, information or belief as to the facts set forth in paragraph 16 as to make answer thereto.

17. This defendant avers that it has no such knowledge, information or belief as to the facts as set forth in paragraph 17 as to make answer thereto.

18. With respect to paragraph 18, defendant admits that United Water, Gas & Electric Company is a corporation of the State of New Jersey, and for further answer refers to paragraph 13 thereof. 30

19. This defendant is advised by counsel, and therefore avers that the proceedings in the State of Pennsylvania, referred to in paragraph 19, are legal.

20. This defendant denies the averments contained in paragraph 20.

21. This defendant denies that while having in its possession said fund of \$8,700, as so-called trustee for

the complainant, it grossly abused said fund or took any action which was inequitable, fraudulent or in bad faith as against the complainant; for further answer to said paragraph, this defendant refers to paragraph 12 of this answer.

That by the bill of complaint in this cause it appears that for a proper and complete determination of this cause and before this Court can make a proper decree respecting the ownership of said shares of stock other parties should be before the Court, namely, Philip B. Shaw, a resident of Pennsylvania, in whose name said stock stands on the books of the said United Water, Gas & Electric Company, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, all of Tower City, Pennsylvania, the persons named in the agreement of June 23, 1915, as the purchasers of the stock in question, and defendant prays that this Court may order complainant to bring in said persons as parties defendant to this cause.

Defendants pray that the complainant's bill be dismissed, with costs, as against this defendant.

COUNTER-CLAIM.

By way of counter-claim against Jane Shaw Hepburn, complainant, this defendant says:

1. That on October 18, 1915, there were standing on the books of the United Water, Gas & Electric Company 379 shares of capital stock owned by and in the name of P. B. Shaw.
2. That theretofore and on September 8, 1915, this defendant obtained final judgment against said P. B. Shaw in the Court of Common Pleas in the County of Schuylkill, Pennsylvania.
3. That on October 18, 1915, it caused to be issued a writ of attachment execution out of said court against the said P. B. Shaw as owner and the defendant United

Water, Gas & Electric Company as garnishee, which attachment execution was based upon said judgment; that pursuant to said writ of attachment the sheriff of said County on October 18, 1915, levied on said stock standing in the name of said P. B. Shaw on the books of the defendant United Water, Gas & Electric Company, and thereafter the said stock was sold by said sheriff and purchased by this defendant, and bill of sale delivered to this defendant by said sheriff; that said proceedings were legal and that by said means this defendant secured title to said shares of stock. Copy of sheriff's bill of sale is attached and marked Exhibit D-2. 10

Thereafter this defendant by its proper agent, namely, George M. Roads, made demand upon said defendant, United Water, Gas & Electric Company, for the issue of a certificate for said 379 shares of stock in the name of this defendant, a copy of said demand being attached hereto and marked Exhibit D-3.

In reply thereto the said defendant United Water, Gas & Electric Company, through its Secretary, Harper T. Bressler, stated that said company had been notified that said shares were the property of this complainant and that said company refused to issue a new certificate to this defendant until the ownership of said shares had been determined, a copy of which reply is hereto attached and marked Exhibit D-4. 20

4. That this defendant was then and is now the lawful owner of said shares of stock and that the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long have no interest in said shares of stock by reason of the fact that the said Jane Shaw Hepburn did not own said stock and could not make proper delivery thereof. 30

5. That for the proper relief of this defendant it is necessary that there be before the Court all other parties in any way interested in said shares of stock, whose interests have been brought to the notice of this defendant,

namely, P. B. Shaw, the owner thereof at the time of the issue of said attachment execution, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, the persons who agreed to purchase said shares of stock from said Jane Shaw Hepburn, as set out in the agreement of June 23, 1915.

6. Defendant also says that on July 9, 1915, said P. B. Shaw entered into an agreement with the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, copy of which is hereto annexed and marked Exhibit D-5. That paragraph 7 of said agreement refers to an agreement between the said Jane Shaw Hepburn and the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, said to bear even date with said agreement of July 9, 1915; that the fact is that the agreement between the said Jane Shaw Hepburn and said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long there referred to, is the agreement of June 23, 1915, referred to in complainant's bill.

7. That this defendant has filed in the Court of Common Pleas of Schuylkill County, Pennsylvania, its bill against the said United Water, Gas & Electric Company and Jane Shaw Hepburn, setting forth the facts with relation to said action against said P. B. Shaw and the proceedings connected therewith and seeking a decree of said Court directing said Jane Shaw Hepburn to surrender to said United Water, Gas & Electric Company for cancellation such stock certificates as are under her control; that it be decreed that the title to said stock is vested in this defendant and has been so vested since October, 1915, and that said United Water, Gas & Electric Company deliver to this defendant a certificate for said 379 shares of capital stock after proper transfers have been made thereof, to which bill the said Jane Shaw Hepburn has filed an answer admitting certain of the

facts alleged in said bill, denying other facts set forth and setting up similar claims to those advanced in the bill of complaint filed in this cause, and avering that the said Common Pleas Court of Schuylkill County is without jurisdiction, and praying that the bill be dismissed; that said Court has heard said cause in a preliminary manner and has directed that the cause proceed to a final hearing on its merits.

This defendant, therefore, prays that an order be made directing that the complainant bring in as parties defendant the said Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long. 10

2. That said defendants, Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, when so brought in as parties to this suit as aforesaid, may answer this counterclaim without oath and each statement herein made.

3. That the said complainant, Jane Shaw Hepburn, and the defendant United Water, Gas & Electric Company may answer this counter-claim without oath, and each statement herein made. 20

4. That it may be decreed that this defendant is the owner of said 379 shares of stock of the United Water, Gas & Electric Company standing in the name of P. B. Shaw upon its books.

5. That it may be decreed that said P. B. Shaw and said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long have no interest in said shares of stock. 30

6. That the said United Water, Gas & Electric Company may be decreed to properly transfer to this company, on its books, the said 379 shares of stock above set forth and issue another certificate or certificates therefor to this defendant.

7. That a writ of subpoena issue in the name of the complainant against the said Philip B. Shaw, John Pfeif-

fer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, commanding said persons to answer the bill of complaint herein and this counter-claim, and abide by such decree as this Court may make in the premises.

8. That the defendant may have such further and other relief as the Court shall deem equitable and just.

GREY & ARCHER,
Solicitors and Counsed for Defendant, Penn-
sylvania Company for Insurance on Lives
and Granting Annuities.

10

EXHIBIT D-1.

COPY

STERLING CONSOLIDATED ELECTRIC
COMPANY

20

TOWER CITY, PA., June 2, 1915.

Mr. W. W. Hepburn,

Dear Sir:

We, the undersigned, agree to purchase from you 380 shares of the Capital Stock of the United Water, Gas & Electric Company for the sum of \$8,700.00, or a proportionate price for the delivery of 355 shares.

30 The said \$8,700.00 to be paid to W. W. Hepburn out of the moneys to be received through the proposed sale of the Capital Stock of the Sterling Consolidated Electric Company and at the time of the final settlement from said sale.

It is expressly understood that the payment of the above sum shall cancel all suits now pending against us or the Sterling Consolidated Electric Company, and also assign all claims that may be held by P. B. Shaw against any of us or the Sterling Consolidated Electric Company,

the Williams Valley Water Company or the United Water & Electric Company, and we also agree to return you cancelled the note of P. B. Shaw for \$10,000, dated 1/3/14.

[Signed] HARPER T. BRESSLER,
JOHN PFEIFFER,
W. N. SNYDER,
B. W. FEES,
G. SCHOFFSTALL,
CHRISTIANE LONG.

10

EXHIBIT D-2.

SHERIFF'S OFFICE.

Pottsville, Pa.

Dec. 14th, 1915.

Mr. Geo. M. Roads, Atty., for Penna. Co. for Insurance on Lives and Granting Annuities. 20

BOUGHT AT SHERIFF'S SALE

Of the property of P. B. Shaw, sold at the Sheriff's office, Pottsville, Pa., by the Sheriff of Schuylkill County, this 14th day of December, A. D. 1915, under writ of Fieri Facias, No. 9, Jan. Term, 1916, the following:

Certificate No. 32 for 15 shares of stock of The United Water, Gas and Electric Co.....	\$5.00	
Certificate No. 36 for 5 shares of stock as above described	5.00	30
Certificate No. 37 for 10 shares of stock as above described	5.00	
Certificate No. 44 for 100 shares of stock as above described	5.00	
Certificate No. 45 for 100 shares of stock as above described	5.00	

Certificate No. 46 for 50 shares of stock as above described	5.00
Certificate No. 47 for 50 shares of stock as above described	5.00
Certificate No. 48 for 49 shares of stock as above described	5.00
Total	<u>\$40.00</u>

10

Rec'd payment Dec. 14, 1915,
from Geo. M. Roads, Atty.
Chas. F. Ditchey, Sheriff.

EXHIBIT D-3.

December 18, 1915.

To United Water, Gas & Electric Co.,
Tower City, Pa.

20 GENTLEMEN:

Enclosed herewith I send you a copy of the bill of sale executed by Charles F. Ditchey, Sheriff of Schuylkill County, for three hundred and seventy-nine (379) shares of the capital stock of the United Water, Gas and Electric Company, standing on its books in the name of P. B. Shaw, taken in execution and sold by the Sheriff, by virtue of a judgment, a copy of which is also herewith enclosed, pursuant to attachment proceedings to No. 340, November Term, 1915, wherein The Pennsylvania Company for Insurance on Lives and Granting Annuities is plaintiff, and P. B. Shaw, defendant, with notice to The United Water, Gas and Electric Company, as Garnishee, under which the stock was attached and sold. The said attachment was issued upon a certain judgment for \$93,693.94, entered to No. 23, November Term, 1915, in the Common Pleas of Schuylkill County,

30

wherein The Pennsylvania Company for Insurance on Lives and Granting Annuities is plaintiff, and P. B. Shaw is defendant.

Will you kindly issue at once one certificate for these 379 shares in the name of The Pennsylvania Company for Insurance on Lives and Granting Annuities, the purchaser of said stock at the Sheriff's Sale, as evidenced by the Copy of the Bill of Sale hereto attached, upon the delivery of the certificate; if you care to have it I will send you a certified copy.

Yours very truly,

GEO. M. ROADS.

10

EXHIBIT D-4.

HARPER T. BRESSLER.

Tower City, Pa., Dec. 27th, 1915. 20

Geo. M. Roads, Esq.

DEAR SIR:

Your notice of the 18th inst. advising us of the purchase, by the Penna. Co. of the shares of stock of the United Water, Gas and Electric Co., which were sold by the Sheriff as the property of P. B. Shaw, and was carefully noted.

Also your request for the issue of a new certificate in the name of the Penna. Co. for said shares.

We have been notified that the said shares are the property of Mrs. Jane Shaw Hepburn, by her Atty., and cannot issue new certificates to any one until the ownership is determined. 30

Yours truly,

HARPER T. BRESSLER,
Secy. U. W., G. & E. Co.

EXHIBIT D-5.

AGREEMENT made and concluded this 9th day of July, A. D. 1915, by and between P. B. Shaw, of the City of Williamsport, Pennsylvania, party of the first part, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, all of Tower City, Pennsylvania, parties of the second part.

WITNESSETH:—

10 WHEREAS, the parties of the second part are owners and holders of the note of the said P. B. Shaw made to the order of the parties of the second part, dated January 3, 1914, for ten thousand dollars (\$10,000) which the said parties of the second part have agreed to cancel and return to the said party of the first part for the consideration hereinafter stated.

NOW THIS AGREEMENT WITNESSETH:

20 1. That the parties of the second part do hereby agree to cancel and return to P. B. Shaw, party of the first part, the note of the said P. B. Shaw to the order of the parties of the second part dated January 3rd, 1914, for ten thousand dollars (\$10,000).

30 2. Prior to the surrender of the aforesaid note to the party of the first part, the said party of the first part agrees to discontinue, end and satisfy of record all suits now pending, whether at law or in equity, in the State of Pennsylvania and the State of New Jersey, in which the party of the first part is plaintiff and in which the parties of the second part and the Sterling Consolidated Electric Company, or any of them, are defendants.

3. With the delivery of the above-mentioned note by the parties of the second part, the said parties of the second part agree to deliver orders to the party of the first part to mark satisfied of record all suits now pending in which the parties of the second part or any of them or The Sterling Consolidated Electric Company are plaintiffs, and the party of the first part is defendant.

4. The settlement and satisfaction of the various cases herein referred to is to be made at the proper costs and charges of the parties plaintiff therein, and shall include all suits now pending in which other parties may be joined as plaintiff or defendant in the said suits.

5. IT IS FURTHER AGREED that the said P. B. Shaw shall execute and deliver to the parties of the second part a release of all claims which he now has or may have up to the time of surrender of the above-mentioned note for ten thousand dollars (\$10,000) as against the parties of the second part of any of them or as against the Sterling Consolidated Electric Company, the Williams Valley Water Company, the United Water, Gas and Electric Company and the Williams Valley Light, Heat & Power Company. 10

6. IT IS AGREED that the said P. B. Shaw will cancel and annul the agreement entered into by him with the Sterling Consolidated Electric Company, dated April 27, 1910, and further that the said P. B. Shaw will execute or cause to be executed the proper agreements providing for the modification of the mortgage and trust agreement between the United Water, Gas and Electric Company and the Pennsylvania Company for Insurance on Lives and Granting Annuities, dated January 1, 1900, to the effect that the conditions therein recited providing for the election of officers of the Williams Valley Water Company by the bondholders of said United Water, Gas and Electric Company shall be modified so as to provide that under certain conditions the officers of said Williams Valley Water Company shall be elected by the stockholders thereof. 20 30

7. IT IS UNDERSTOOD AND AGREED that the terms and conditions of the present agreement shall be enforceable against the parties hereto only in the event that the terms and conditions of a certain other contract dated of even date herewith between Jane Shaw Hepburn, of the one part, and John Pfeiffer, G. Schoffstall,

Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, of the other part, copy of which is hereto attached as part hereof, have been performed and complied with.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

WITNESS:

	C. E. GILMORE (as to P. B. Shaw)	
10		P. B. SHAW [SEAL]
		{ JOHN PFEIFFER [SEAL]
	J. B. WHITWORTH	{ B. W. FEES [SEAL]
		{ HARPER T. BRESSLER [SEAL]
	J. B. WHITWORTH	{ W. N. SNYDER [SEAL]
	J. B. WHITWORTH	CHRISTIANE LONG [SEAL]
		G. SCHOFFSTALL [SEAL]

20

30

(Filed July 27, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

JANE SHAW HEPBURN,

Complainant,

AND

UNITED WATER, GAS & ELECTRIC

COMPANY, ET ALS.,

Defendants.

ON BILL, &C.

COUNTER-CLAIM

AGAINST PHILIP B. 10

SHAW, ET AL.

The counter-claim of The Pennsylvania Company for Insurance on Lives and Granting Annuities against Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, made defendants to this cause by order dated July 25th, 20 1916.

By way of counter-claim against Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long this defendant says:

1. That on October 18, 1915, there were standing on the books of the United Water, Gas & Electric Company 379 shares of capital stock owned by and in the name of P. B. Shaw.

2. That theretofore and on September 8, 1915, this defendant obtained final judgment against said P. B. Shaw in the Court of Common Pleas in the County of Schuylkill, Pennsylvania. 30

3. That on October 18, 1915, it caused to be issued a writ of attachment execution out of said Court against the said P. B. Shaw as owner, and the defendant United Water, Gas & Electric Company as garnishee, which at-

tachment execution was based upon said judgment; that pursuant to said writ of attachment the Sheriff of said County, on October 18, 1915, levied on said stock standing in the name of said P. B. Shaw on the books of the defendant United Water, Gas & Electric Company, and thereafter the said stock was sold by said Sheriff and purchased by this defendant, and bill of sale delivered to this defendant by said Sheriff; that said proceedings were legal and that by said means this defendant secured title to said shares of stock. (Copy of Sheriff's bill of sale is attached and marked Exhibit D-2).

Thereafter this defendant by its proper agent, namely, George M. Roads, made demand upon said defendant United Water, Gas & Electric Company for the issue of a certificate for said 379 shares of stock in the name of this defendant, a copy of said demand being attached hereto and marked Exhibit D-3.

In reply thereto the said defendant United Water, Gas & Electric Company, through its Secretary, Harper T. Bressler, stated that said company had been notified that said shares were the property of this complainant and that said company refused to issue a new certificate to this defendant until the ownership of said shares had been determined, copy of which reply is hereto attached and marked Exhibit D-4.

4. That this defendant was then and is now the lawful owner of said shares of stock, and that the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long have no interest in said shares of stock by reason of the fact that the said Jane Shaw Hepburn did not own said stock and could not make proper delivery thereof.

5. Defendant also says that on July 9th, 1915, said P. B. Shaw entered into an agreement with the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, copy of which is hereto annexed and marked Exhibit D-5. That para-

graph 7 of said agreement refers to an agreement between the said Jane Shaw Hepburn and the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, said to bear even date with said agreement of July 9th, 1915; that the fact is that the agreement between the said Jane Shaw Hepburn and said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, there referred to, is the agreement of June 23rd, 1915, referred to in complainant's bill.

7. That this defendant has filed in the Court of Common Pleas, of Schuylkill County, Pennsylvania, its bill against the said United Water, Gas & Electric Company and Jane Shaw Hepburn setting forth the facts with relation to said action against said P. B. Shaw and the proceedings connected therewith, and seeking a decree of said Court directing said Jane Shaw Hepburn to surrender to said United Water, Gas & Electric Company for cancellation such stock certificates as are under her control; that it be decreed that the title to said stock is vested in this defendant and has been so vested since October, nineteen hundred and fifteen, and that said United Water, Gas & Electric Company deliver to this defendant a certificate for said 379 shares of capital stock after proper transfers have been made thereof, to which bill the said Jane Shaw Hepburn has filed an answer admitting certain of the facts alleged in said bill, denying other facts set forth and setting up similar claims to those advanced in the bill of complaint filed in this cause, and avering that the said Common Pleas Court of Schuylkill County is without jurisdiction and praying that the bill be dismissed; that said Court has heard said cause in a preliminary manner and has directed that the cause proceed to a final hearing on its merits.

This defendant, therefore, prays:

i. That the said defendants, Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N.

Snyder, B. W. Fees and Christiane Long, may answer this counter-claim without oath and each statement herein made.

2. That it may be decreed that this defendant is the owner of said 379 shares of stock of the United Water, Gas & Electric Company standing in the name of P. B. Shaw upon its books.

3. That it may be decreed that said Philip B. Shaw and said John Pfeiffer, G. Schoffstall, Harper T. Bresler, W. N. Snyder, B. W. Fees and Christiane Long
10 have no interest in said shares of stock.

4. That this defendant may have such further and other relief as the Court shall deem equitable and just.

GREY & ARCHER,
Solicitors and Counsel for Defendant, The
Pennsylvania Company for Insurance on
Lives and Granting Annuities.

EXHIBIT D-2.

SHERIFF'S OFFICE,

Pottsville, Pa.

Dec. 14th, 1915.

Mr. Geo. M. Roads, Atty. for Penna. Co. for Insurance on Lives and Granting Annuities.

BOUGHT AT SHERIFF'S SALE

Of the property of P. B. Shaw, sold at the Sheriff's office, Pottsville, Pa., by the Sheriff of Schuylkill County, this 14th day of December, A. D. 1915, under writ of Fieri Facias, No. 9, Jan. Term, 1916, the following:

Certificate No. 32 for 15 shares of stock of The United Water, Gas and Electric Co.....	\$5.00	
Certificate No. 36 for 5 shares of stock as above described	5.00	
Certificate No. 37 for 10 shares of stock as above described	5.00	
Certificate No. 44 for 100 shares of stock as above described	5.00	
Certificate No. 45 for 100 shares of stock as above described	5.00	
Certificate No. 46 for 50 shares of stock as above described	5.00	10
Certificate No. 47 for 50 shares of stock as above described	5.00	
Certificate No. 48 for 49 shares of stock as above described	5.00	
Total	\$40.00	

Rec'd payment Dec. 14, 1915,
from Geo. M. Roads, At'ty. 20
Chas. F. Ditchey, Sheriff.

 EXHIBIT D-3.

December 18, 1915.

To United Water, Gas & Electric Co.,
Tower City, Pa. 30
Mr. Harper T. Bressler, Sec'y.

GENTLEMEN:

Enclosed herewith I send you a copy of the bill of sale executed by Charles F. Ditchey, Sheriff of Schuylkill County, for three hundred and seventy-nine (379) shares of the capital stock of the United Water, Gas and Electric Company, standing on its books in the name

of P. B. Shaw, taken in execution and sold by the Sheriff, by virtue of a judgment, a copy of which is also herewith enclosed, pursuant to attachment proceedings to No. 340, November Term, 1915, wherein The Pennsylvania Company for Insurance on Lives and Granting Annuities is plaintiff, and P. B. Shaw, defendant, with notice to The United Water, Gas and Electric Company, as Garnishee, under which the stock was attached and sold. The said attachment was issued upon a certain judgment for \$93,693.94, entered to No. 23, November Term, 10 1915, in the Common Pleas of Schuylkill County, wherein The Pennsylvania Company for Insurance on Lives and Granting Annuities is plaintiff, and P. B. Shaw is defendant.

Will you kindly issue at once one certificate for these 379 shares in the name of The Pennsylvania Company for Insurance on Lives and Granting Annuities, the purchaser of said stock at the Sheriff's sale, as evidenced by the copy of the Bill of Sale hereto attached, upon the delivery of the certificate; if you care to have it I will send 20 you a certified copy.

Yours very truly,

GEO M. ROADS.

EXHIBIT D-4.

HARPER T. BRESSLER

30

Tower City, Pa., Dec. 27th, 1915.

Geo. M. Roads, Esq.

DEAR SIR:

Your notice of the 18th inst. advising us of the purchase, by the Penna. Co., of the shares of stock of the United Water, Gas and Electric Co., which were sold by the Sheriff as the property of P. B. Shaw, and was carefully noted.

Also your request for the issue of a new certificate in the name of the Penna. Co. for said shares.

We have been notified that the said shares are the property of Mrs. Jane Shaw Hepburn, by her Atty., and cannot issue new certificate to any one until the ownership is determined.

Yours truly,

HARPER T. BRESSLER,
Secy U. W., G. & E. Co.

10

EXHIBIT D-5.

AGREEMENT made and concluded this 9th day of July, A. D. 1915, by and between P. B. Shaw, of the City of Williamsport, Pennsylvania, party of the first part, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, all of Tower City, Pennsylvania, parties of the second part.

WITNESSETH:

20

WHEREAS, the parties of the second part are owners and holders of the note of the said P. B. Shaw made to the order of the parties of the second part, dated January 3, 1914, for ten thousand dollars (\$10,000), which the said parties of the second part have agreed to cancel and return to the said party of the first part for the consideration hereinafter stated.

NOW THIS AGREEMENT WITNESSETH:

1. That the parties of the second part do hereby agree to cancel and return to P. B. Shaw, party of the first part, the note of the said P. B. Shaw to the order of the parties of the second part, dated January 3rd, 1914, for ten thousand dollars (\$10,000).

2. Prior to the surrender of the aforesaid note to the party of the first part, the said party of the first part agrees to discontinue, end and satisfy of record all suits

now pending, whether at law or in equity, in the State of Pennsylvania and the State of New Jersey, in which the party of the first part is plaintiff, and in which the parties of the second part and the Sterling Consolidated Electric Company, or any of them, are defendants.

3. With the delivery of the above-mentioned note by the parties of the second part, the said parties of the second part agree to deliver orders to the party of the first part to mark satisfied of record all suits now pending in
10 The Sterling Consolidated Electric Company are plaintiffs, and the party of the first part is defendant.

4. The settlement and satisfaction of the various cases herein referred to is to be made at the proper costs and charges of the parties plaintiff therein, and shall include all suits now pending in which other parties may be joined as plaintiff or defendant in the said suits.

5. IT IS FURTHER AGREED that the said P. B. Shaw shall execute and deliver to the parties of the second part
20 a release of all claims which he now has or may have up to the time of surrender of the above-mentioned note for ten thousand dollars (\$10,000) as against the parties of the second part, or any of them, or as against the Sterling Consolidated Electric Company, the Williams Valley Water Company, the United Water, Gas and Electric Company and the Williams Valley Light, Heat & Power Company.

6. IT IS AGREED that the said P. B. Shaw will cancel and annul the agreement entered into by him with the
30 Sterling Consolidated Electric Company, dated April 27, 1910, and further, that the said P. B. Shaw will execute, or cause to be executed, the proper agreements providing for the modification of the mortgage and trust agreement between the United Water, Gas and Electric Company and the Pennsylvania Company for Insurances on Lives and Granting Annuities, dated January 1, 1900, to the effect that the conditions therein recited providing

for the election of officers of the Williams Valley Water Company by the bondholders of said United Water, Gas and Electric Company shall be modified so as to provide that under certain conditions the officers of said Williams Valley Water Company shall be elected by the stockholders thereof.

7. IT IS UNDERSTOOD AND AGREED that the terms and conditions of the present agreement shall be enforceable against the parties hereto only in the event that the terms and conditions of a certain other contract dated of even date herewith between Jane Shaw Hepburn, of the one part, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, of the other part, copy of which is hereto attached as part hereof, have been performed and complied with. 10

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

WITNESSES:

C. E. GILMORE (as to P. B. Shaw) 20

P. B. SHAW [SEAL]

{ JOHN PFEIFFER [SEAL]

J. B. WHITWORTH { B. W. FEES [SEAL]

{ HARPER T. BRESSLER [SEAL]

{ W. N. SNYDER [SEAL]

J. B. WHITWORTH CHRISTIANE LONG [SEAL]

J. B. WHITWORTH G. SCHOFFSTALL [SEAL]

(Filed September 9, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

JANE SHAW HEPBURN,

Complainant,

AND

10

UNITED WATER, GAS & ELECTRIC

COMPANY, ET ALS.,

Defendants.

ON BILL, &C.

ANSWER.

20 Answer of John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, joined as defendants in this cause, pursuant to an order made therein dated July 25, 1916, to counter-claim filed against them by the defendant, Pennsylvania Com-

Said defendants, answering said counter-claim:

1. Admit the facts stated in paragraph one of said counter-claim.

2. Admit the facts stated in paragraph two of said counter-claim.

30 3. Admit the issue of attachment execution against the said Shaw and the American Water, Gas and Electric Company as garnishee, and the attempted levy by the Sheriff of Schuylkill County on October 18, 1915, upon the stock referred to in said counter-claim as the stock of said P. B. Shaw, and the attempted sale thereof by the Sheriff and purchase by the Pennsylvania Com-

4. Have no knowledge or information sufficient to form a belief as to whether the proceedings were legal, or whether the Pennsylvania Company secured title to

said shares of stock by reason of said proceedings and sale.

5. Admit the demand made upon the defendant, United Company, for the issue of a certificate for three hundred seventy-eight shares in the name of the Pennsylvania Company.

6. Admit the refusal of the United Company to transfer said stock, for the reasons set forth in Exhibit D-1, attached to said counter-claim.

7. Have no knowledge or information sufficient to form a belief as to whether or not the Pennsylvania Company was the owner of said shares at the time said demand was made. 10

8. Deny that these defendants have no interest in said shares of stock.

9. Admit the execution of the agreement dated July 9, 1915, between P. B. Shaw and these defendants, referred to in paragraph five.

10. Admit the execution of the agreement dated June 23, 1915, between the complainant in this cause and these answering defendants, a copy of which is attached to said bill of complaint. 20

11. Admit that the Pennsylvania Company filed in the Court of Common Pleas of Schuylkill County its bill of complaint against the United Company and the complainant, as set forth in paragraph seven of said counter-claim, but, for the purpose, object and prayer of said bill of complaint, refers to the same when produced.

12. Have no knowledge or information sufficient to form a belief as to what disposition the said Court of Common Pleas of Schuylkill County made of said bill of complaint. 30

13. Aver that these defendants made the agreement with the said complainant dated June 23, 1915, in good faith, for the purpose of acquiring the shares of stock referred to therein from the said complainant, as the

owner thereof, and that, at the time of the execution of said agreement, these defendants understood that upon the consummation of said agreement with said complainant, these defendants would become the absolute owners of said shares of stock, thereby sold by the complainant, and purchased by these defendants.

10 14. Aver that the agreement on the part of these defendants, to purchase the said shares of stock from the said complainant, was predicated upon the strict and faithful performance by the defendant, P. B. Shaw, of each and every covenant and agreement made by him in the contract dated the 9th day of July, 1915, Exhibit D-5, attached to said counter-claim.

20 15. Aver that \$8,700, the purchase price of said shares of stock, which defendants agreed to acquire from the complainant, was deposited with the Pennsylvania Company in a special account, in accordance with the letter of said company, dated September 10, 1915, Exhibit C-3, attached to the complainant's bill, which was to be paid over by the Pennsylvania Company upon satisfactory evidence from defendants that all of the things required to be done by said defendant, Shaw, and the complainant and these defendants, under agreement dated June 23rd, and July 9, 1915, had been completed; whereupon, the Pennsylvania Company was required to turn over said consideration for said stock to the said complainant.

30 16. Aver that defendants have the right to receive from the said complainant the certificates for the shares of disputed stock in her possession, upon the compliance by her and the defendant, Shaw, of the matters and things to be performed by them under the terms of said agreements above referred to, and when the said certificates of stock are put into the possession of these defendants, they will then become the absolute owners of said stock, free and clear of any right or claim therein by the Pennsylvania Company.

17. Aver that these defendants acquire a right, title and interest in said shares of stock by reason of their contract for the purchase of the same from the complainant, and are entitled to become the absolute owners thereof, upon the performance by the said defendant, Shaw, and the complainant, of all the matters and things to be fulfilled and performed by them under the terms of the agreements above referred to, and that the defendants should be permitted to assert said right, title or interest as against any title in said stock on the part of the defendant, Pennsylvania Company, because no interest or title was acquired by said defendant until the attachment, above mentioned, was issued on the 18th of October, 1915, nearly four months after these defendants agreed to purchase the said shares of stock from the complainant. 10

18. Aver that these defendants made said agreements in good faith, and they became interested in said shares of stock bona fide, without any knowldege, at the time said agreement was made, that any other person had any claim thereon, except the complainant, and that a valuable consideration was paid by these defendants for their interest in said shares of stock, and they are now entitled to assert such right, title and interest as against the defendant, Pennsylvania Company, and become the absolute owners of said shares of stock upon the performance by said defendant, Shaw, and the complainant, of the terms of the agreements above mentioned. 20

19. Aver that if it should be determined that the said defendant, Pennsylvania Company, is the owner of said shares of stock, the defendant, Pennsylvania Company, should be directed to return to these defendants the sum of \$8,700 deposited with the said Pennsylvania Company, as aforesaid. 30

Pray that the counter-claim made against these defendants may be dismissed with costs.

LEWIS STARR,

Solicitor for and of counsel with Answering Defendants.

(Filed August 10, 1916.)

IN CHANCERY OF NEW JERSEY.

	BETWEEN	} ON BILL, &C. REPLICATION OF JANE SHAW HEPBURN, COM- PLAINANT, TO ANSWER OF DEFENDANT, PENN- SYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, AND AN- SWER OF JANE SHAW HEPBURN TO COUNTER- CLAIM OF SAID DEFEND- ANT.
	JANE SHAW HEPBURN,	
10	Complainant,	
	AND	
	UNITED WATER, GAS & ELEC- TRIC COMPANY, ET ALS.,	
	Defendants.	

20

REPLICATION.

The complainant joins issue on the answer of the defendant, Pennsylvania Company for Insurance on Lives and Granting Annuities.

ANSWER TO THE COUNTER-CLAIM OF THE PENNSYLVANIA
COMPANY FOR INSURANCE ON LIVES
AND GRANTING ANNUITIES.

30 The complainant, Jane Shaw Hepburn, answering the counter-claim filed herein by The Pennsylvania Company for Insurance on Lives and Granting Annuities, says that:

I. Complainant admits that on October 19, 1915, there were standing in the name of P. B. Shaw, on the books of the United Water, Gas & Electric Company, 379 shares of the capital stock of said Company, but complainant shows and charges the fact to be that of said 379 shares,

349 shares, represented by the following certificates, to wit, No. 44, for 100 shares; No. 45, for 100 shares; No. 46, for 50 shares; No. 47, for 50 shares, and No. 48, for 49 shares were then owned and possessed by the complainant, and with reference thereto complainant denies that the said P. B. Shaw, on the date named, was the owner thereof or had any interest therein. With reference thereto complainant says that in the month of May, 1915, the said P. B. Shaw, for a good and valuable consideration, sold, assigned, transferred and set over unto the complainant, the said certificates of stock, representing said 349 shares, and from that time to the present complainant has been the sole owner and possessor of the said shares and the certificates representing the same. Complainant denies that the said P. B. Shaw, either in October, 1915, or at any time thereafter, has had any right, title or interest in said stock or said certificates. 10

2. Complainant is informed that certain proceedings were taken by the defendant in the Court of Common Pleas of Schuylkill County, Pennsylvania, against P. B. Shaw, resulting in some judgment; but complainant has no knowledge as to the validity of said judgment or the amount thereof, and requires proof thereof by the defendant. Complainant denies also that said judgment has affected or can affect the ownership of or title to said stock. 20

3. Complainant admits that the defendant caused a writ of attachment to be issued out of the Common Pleas Court of Schuylkill County, Pennsylvania, against P. B. Shaw, and that defendant sought thereby to obtain a lien upon said shares of stock of complainant, and that defendant also attempted, under said writ of attachment, to make sale of said shares of stock through the Sheriff of said County. But complainant denies that the defendant, under said judgment or attachment, obtained any lien upon or interest in the said 349 shares of stock owned by the complainant, and charges that the said Court of 30

Common Pleas of Schuylkill County, Pennsylvania, was and is without jurisdiction in the premises insofar as the proceedings against the United Water, Gas & Electric Company, as garnishee, and the service of said writ of attachment were concerned, and that the said writ of attachment, execution and judgment therein, and all of said proceedings had under said judgment, were and are now null and void and absolutely without any legal force and effect.

- 10 Complainant denies that defendant, by means of said proceedings or any part thereof, acquired any right, title or interest in and to said shares of stock. Complainant says that the United Water, Gas & Electric Company had not at the time of the issuing of the said attachment proceedings, nor at any time prior to the completion of the same, complied with the provisions of the laws of the Commonwealth of Pennsylvania relating to registration of foreign corporations doing business in that State; that the said Company was not then, nor at any time prior
20 to April 24, 1916, authorized to transact business within the Commonwealth of Pennsylvania; that it had no office in said State of Pennsylvania, and has transacted and now transacts no business there.

Complainant has no knowledge as to whether or not defendant made demand upon the said United Water, Gas & Electric Company for the issue to it of a certificate for 379 shares of stock, or as to what, if any reply was made by the United Water, Gas & Electric Company to such demand, but requires proof thereof. But complainant
30 charges that even if said demand were made, it was ineffectual, because the said 349 shares of stock, represented by the certificates aforesaid, were owned and possessed by the complainant and had been so owned and possessed since the month of May, 1915.

4. Complainant denies that the defendant is now or that it ever was the owner of said 349 shares of stock. Complainant admits that John Pfeiffer, G. Schoffstall, Harper

T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long then had and now have no interest in said shares of stock, but denies that said want of interest is due to the averments of said paragraph. Complainant, on the contrary, says that she was the owner of said stock and still remains the owner of said stock.

5. Complainant further says that said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long have been made parties defendant at the request of the defendant, Pennsylvania Company for Insurance on Lives and Granting Annuities, but complainant denies that the said John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long have any right, title or interest in the said 349 shares of stock or any part thereof. 10

6. Complainant has no knowledge as to whether P. B. Shaw made the agreement mentioned in said paragraph, and marked Exhibit D-6 in said counter-claim, and requires proof thereof by said defendant. But complainant denies that she was a party to any such alleged agreement and denies that it has any bearing upon the rights of the complainant in or to said stock. 20

7. Complainant admits that defendant has filed its bill in equity against the United Water, Gas & Electric Company and the complainant in the Court of Common Pleas of Schuylkill County, Pennsylvania, containing substantially the averments of defendant's counter-claim filed herein and asking that a decree be entered, to the effect that the defendant is the owner of said stock. Complainant, however, says that said bill in equity was filed in said Common Pleas Court of Schuylkill County after the filing of complainant's bill of complaint in the Court of Chancery of New Jersey, and after the service of a copy of said bill had been made by the complainant upon the said defendant, in accordance with the order of the Court of Chancery of New Jersey made herein. 30

Complainant admits that in her answer filed in said Court of Common Pleas of Schuylkill County, she avers that said Pennsylvania Court is without jurisdiction and prays that said bill be dismissed. And complainant avers and charges that prior to the filing of said bill in equity by the said defendant in said Court of Common Pleas of Schuylkill County, Pennsylvania, this Court acquired complete and full jurisdiction of the subject matter of said bill of complaint and the parties mentioned therein, and that the filing of said bill in the Pennsylvania Court by
10 said defendant was ineffectual to oust this Court of its jurisdiction in the premises.

BLEAKLY & STOCKWELL,
Solicitors for and of Counsel with Complainant.

20

30

IN CHANCERY OF NEW JERSEY.

Between	}		
JANE SHAW HEPBURN,			
Complainant,			ON BILL, &C.
and			FINAL HEARING.
UNITED WATER, GAS AND ELEC-			
TRIC COMPANY, ET ALS.,			10
Defendants,			

Before his Honor, E. B. LEAMING, Vice Chancellor, at the Chancery Chambers, Camden, New Jersey, on Tuesday, October 17th, 1916.

Appearances :

BLEAKLY & STOCKWELL, ESQS., with whom was associated CHARLES J. HEPBURN, ESQ., of the Philadelphia Bar, for complainant. 20

GREY & ARCHER, ESQS., by F. MORSE ARCHER, ESQ., and GEORGE D. CONNELLY, ESQ., with whom was associated MAURICE B. SAUL, of the Philadelphia Bar, for the Pennsylvania Company for Insurance on Lives and Granting Annuities, one of the defendants.

LEWIS STARR, ESQ., for the United Water, Gas and Electric Company, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiana Long, defendants. 30

WILLIAM WILLIAMSON HEPBURN, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says :

By Mr. Stockwell:

Ques. Where do you reside, Mr. Hepburn?

Ans. Villa Nova.

Ques. Villa Nova, Pennsylvania?

Ans. Villa Nova, Pennsylvania.

Ques. What is your business?

Ans. Gas and electric properties, a number of different things.

Ques. With what firm are you identified?

10 Ans. Myself.

Ques. Are you the husband of the complainant, Jane Shaw Hepburn?

Ans. I am.

Ques. And is she the daughter of P. B. Shaw?

Ans. She is.

Ques. Did you have anything to do with the securing of certain shares of stock for her in the United Water, Gas and Electric Company from P. B. Shaw?

20 Ans. Yes; I acted for Mrs. Hepburn in securing some three hundred and—it was to have been about 380 shares—of United Water, Gas & Electric stock which her father gave to her on account of some advances she had made to him.

Ques. Witness is shown certificates as follows: No. 48, for 49 shares; No. 47, for 50 shares; No. 46, for 50 shares; No. 45, for 100 shares; No. 44, for 100 shares, and No. 39, for 1 share, and is asked if they are the certificates as evidencing the stock secured by you for Mrs. Hepburn, your wife?

30 Ans. These are the certificates I secured from Mr. Shaw for Mrs. Hepburn's account.

Mr. Stockwell: I will ask that these be marked in evidence.

(Said certificates marked C1, as one exhibit.)

Ques. From whom did you receive these certificates of stock?

Ans. Mr. P. B. Shaw.

Ques. When did you receive them from him?

Ans. It was within a day or two after May 14th, 1915.

Ques. Did you receive them for yourself or for some one else?

Ans. I received them for Mrs. Hepburn, in accordance with the agreement he had made with Mrs. Hepburn to give her these certificates.

10

Ques. Mr. P. B. Shaw had been the owner of these shares, had he?

Ans. He was.

Ques. What was the consideration for the transfer of these shares from Mr. P. B. Shaw to Mrs. Hepburn?

Ans. A year or more prior to that—I don't recollect the dates—Mrs. Hepburn had given to her father, Mr. Shaw, I think, 350 shares of Pennsylvania Building Company stock and \$10,000 in bonds of Pennsylvania Marble & Granite Company, had advanced them to Mr. Shaw, to be returned to her. After—I think it was in January, 1915, he had not been able as yet to return them to her, and he agreed at that time—

20

Ques. A little louder, please.

Ans. In January, 1915, Mr. Shaw agreed to turn over to Mrs. Hepburn these certificates of United Gas, Water & Electric Company on account of advances she had made to him.

Ques. What advances had she made to him?

30

Ans. She had made to him 350 shares of Pennsylvania Building Company stock and \$10,000 in bonds, Pennsylvania Marble & Granite Company, sometime previous to that, a year or more, I haven't got the dates; I could refresh my recollection probably from the books.

Ques. Was that agreement oral between you on behalf of Mrs. Hepburn and Mr. Shaw?

Ans. The first agreement made in January was oral, between Mrs. Hepburn and Mr. Shaw and myself, and after that I acted for Mrs. Hepburn in the matter.

Ques. And that was carried out?

Ans. That was carried out. He did not actually turn the certificates over to me until, I say, a few days after May 14th, 1915.

Ques. How are you able to fix that date?

10 Ans. Why, my brother, C. J. Hepburn, who was attorney for Mr. Shaw in a number of these matters, was taken sick in the latter part of April, about April 25th, with typhoid, and after he was laid up I had to look after the matter more myself, and after a hearing in Harrisburg, at which my brother could not represent Mr. Shaw, I then took it up with Mr. Shaw and insisted on the certificates being turned over to me physically, and a day or two after that he handed me the certificates in Philadelphia.

20 Ques. Where were these certificates kept from the time you received them until the time they were delivered to us in this suit?

Ans. I kept them in my safe in the office, 1417 Pennsylvania Building, Philadelphia, until I turned them over to my brother, C. J. Hepburn. I haven't got that exact date that I handed them to him; some date later than that.

Ques. Did Mr. Shaw retain any interest whatever in these shares?

Ans. He had no interest afterwards.

30 Ques. Did he have any control over the shares of stock after you received them?

Ans. None at all; in fact, he did act for me sometime prior to that. The agreement was made in January in which he agreed to give Mrs. Hepburn these certificates on account of advances she had made to him, and he delivered the certificates to me in May.

Ques. I call your attention to the fact that there is on the back of each certificate the date "10-28-15," being the cancellation of certain stamps?

Ans. Well, that is about the date that I handed these certificates to my brother, C. J. Hepburn, and he called my attention to the fact that they were not stamped, as was required by the stamp act, and I then went down with another brother of mine, an attorney, to the Revenue Office, in the Post Office Building, Philadelphia, and made an affidavit to the facts and had them stamped by the Revenue officers there, and I believe 10
the penalty was remitted.

Ques. As stated on the certificates, "Penalty Remitted?"

Ans. Yes, sir.

Ques. Did you take down at that time any other paper to have stamps cancelled in similar fashion?

Ans. At the time I handed those certificates to C. J. Hepburn I also had the contract with Mrs. Hepburn.

Ques. Witness is shown agreement dated June 23rd, between Jane Shaw Hepburn,— 20

The Vice Chancellor: What year?

Ques. 1915—of the first part, and John Pfeiffer, et al., of the second part. Is that the agreement you refer to?

Ans. That is the agreement, and that was not stamped either and I took it down at the same time I took the certificates down to the Revenue Office and had it stamped. 30

Ques. And the penalty remitted in similar fashion?

Ans. Yes, sir.

Ques. Now, this agreement dated June 23rd, 1915, purports to cover an agreement for the sale of certain shares of stock I think that had better be marked.

(Said paper marked Exhibit C-2).

Ques. I ask you whether the shares referred to in that agreement are the shares represented by the certificates I have already shown to you?

Ans. This is the contract that I negotiated for the sale of the certificates which I received from Mr. Shaw for Mrs. Hepburn's account.

The Vice Chancellor: Give me a notion of what that agreement is, Mr. Stockwell.

10 Mr. Stockwell: I was going to have him explain this transaction from the start. I have put it in evidence and I will read it.

(Said agreement read by counsel).

Ques. I show you agreement bearing date July 9th, 1915, between P. B. Shaw, of the first part, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, of the second
20 part: Was that an agreement executed in connection with a proposed sale of these shares of stock to Messrs. Bressler, et al?

Ans. It was.

(Said paper marked Exhibit C-3).

The Vice Chancellor: You have not proved the signatures to these agreements, but if there is no objection I apprehend they are admitted.

30 Mr. Starr: They are all set up in the various pleadings.

Mr. Stockwell: They are all admitted. I will read this agreement. (Said paper read by counsel).

Ques. I am going to ask you, Mr. Hepburn, to explain this entire transaction, how these agreements came to be

signed, &c., which will clear up the entire situation. Now, you acted for whom in the sale of this stock to Bressler, et als?

Ans. The sale of the stock of the United Water, Gas & Electric Company?

Ques. Yes.

Ans. I acted for Mrs. Hepburn.

Ques. Were you empowered by P. B. Shaw to represent him in procuring the performance of the necessary terms set forth in this agreement of July 9th and to carry out the agreement of June 23d? 10

Ans. Before I went up to Tower City to meet these people I was authorized by Mr. Shaw to act for him in all matters in which he was interested with these people.

Ques. Now won't you start at the very beginning of this transaction and tell in your own language just how it developed and what happened?

Ans. After the arrangement made in January, 1915, whereby Mr. Shaw agreed to give Mrs. Hepburn these certificates of the United Water, Gas & Electric Company I entered into certain negotiations for the sale of the electric property at Williamstown, which is one of the subsidiary companies and operated jointly with this water company, with some people in Baltimore. Some difficulties arose about that. The people in Baltimore went up to Tower City, took the matter up themselves and did not come to a final agreement. In the meantime Mr. Shaw got into some difficulties as to the operations of the water company up there and various suits were started in New Jersey, I think, and one in Dauphin—no, more in Dauphin County, Pennsylvania. My brother, C. J. Hepburn, acted for Mr. Shaw in those suits, and there were a number of different suits, counter suits, on both sides. In April my brother was taken sick with typhoid, and after it was pronounced typhoid I realized it was going to be a long case and that he would be tied up for sometime. Shortly after that, in May, one of the proceedings came up in 20 30

Dauphin County, which I took up with a younger brother of mine, L. F. Hepburn, who was in communication with attorneys in Harrisburg, Olmsted & Stamm, in Harrisburg. After that hearing in Harrisburg I realized that—it seemed to me that Mr. Shaw was getting into a lot of litigation that would be very costly and probably run along for years, and I was anxious to realize on these securities of Mrs. Hepburn's, and I felt that the only thing that could be done about it would be to come to a settlement by all parties. I really represented the Baltimore parties in their negotiations for the purchase of the property as well as I did Mrs. Hepburn. I then went to Mr. Shaw and told him I thought all these matters could be settled up out of court, that I believed the Baltimore parties would purchase the property at a fair price and I believed the Tower City people would sit down and talk the matter over in a business way and would settle all these things out of court, and he finally authorized me to go there and represent him and agreed to abide by any decision that I arrived at in the case of a settlement. I then said I wanted to have the physical possession of this stock of Mrs. Hepburn's which he had had up to that time in his own possession and he turned it over to me. And I made an appointment with the Tower City people—I first saw the Baltimore people and found out what they would do about the purchase of the electric property and then made an appointment with the Tower City people and went up there I think on June 2d, 1915, met them there in the evening, I think all the parties in interest were present, and showed them my authority, power of attorney I had authorizing me to act for Mr. Shaw,—they insisted on having something in writing and I showed them that; I told them I represented Mrs. Hepburn, who was the owner of these certificates of the United Water, Gas & Electric Company, and that I represented the Baltimore people who I thought would purchase the property. We discussed the thing at considerable length and talked over

the whole situation and came to the final agreement on June 2d as to the sale of the electric property to the Baltimore people, as to the contract with Mr. Shaw for the surrender of his \$10,000 note and the cancellation of all the suits, and as to the purchase by them of the securities of the United Water, Gas & Electric Company which Mrs. Hepburn owned. We prepared papers that night looking to the final agreement, transcribing the final agreement, and I returned to Philadelphia and had the contracts prepared; the contract for the surrender of the \$10,000 note 10 and the purchase of the stock was in one contract, and the contract for the sale of the electric property was in another contract with the General Utilities & Operating Company of Baltimore. I went back to Tower City expecting to sign these contracts but Mr. Shaw's attorney, Mr. Seth T. McCormick, refused to permit Mr. Shaw to execute the agreement jointly with Mrs. Hepburn for the sale of securities which were not his own securities and said that that should be in a separate contract. I had to return to Philadelphia and have those contracts prepared 20 separately. Then I went back to Tower City or sent the contracts back to them—I believe I did—and had them finally executed and paid \$5,000 down for the purchase of the property which had been given to me by the General Utilities & Operating Company of Baltimore. Final settlement then was arranged for. Sometime elapsed before, I think, September 23rd, before the final settlement, giving the people the right to deposit their bonds and the stocks in the local bank, and the other people had a right to examine the ordinances and the titles, and after 30 examination, unless there was some fault in them, the contract was to go through or they were to lose the \$5,000. The attorneys finally approved the ordinances and the—

Mr. Connelly: It seems to me, if your Honor please, we are getting away beyond the history of the making of these agreements.

The Vice Chancellor: It may be, but I think it may throw some light on it. I do not know but what it will. I will hear it.

Ans. (Continuing) And we arranged for final settlement by all the parties in Tower City. The Baltimore people still requested me to act in the matter for them; they had gone up there and gotten into difficulties and they thought I had better go up and complete the transaction. So I arranged to go up there. I went up
10 there to the bank in Tower City, who was the representative of the Pennsylvania Company, as I understood, and another representative from the Pennsylvania Company, one of the men in their employ—I just forget his name—and met the parties up there, and I had with me the settlement—notice of satisfaction of the suits, that is, orders to settle the suits from the different attorneys on my part, and when we got there Mr. Bressler and his people did not have those orders with
20 him to settle his different suits. The money was there from the Pennsylvania Company to settle the purchase price by the Baltimore people. And I said to Mr. Bressler that if he was satisfied, I was satisfied to have the Pennsylvania Company act as trustee and retain the \$8,700 of the purchase price of the stock until these suits had been settled and the bonds stamped. There was some underlying water bonds that had to be stamped with this agreement that had been provided for by Mr. Shaw. I had gone to the different banks and arranged for the bonds to be turned in for that
30 purpose. Mr. Bressler said he was satisfied—he spoke to Mr. Pfeiffer and some of them, the other people—to have the money paid to the Pennsylvania Company if they would be willing to act in it. I went to Mr. Saul and asked him if they would act as trustee for this money pending the settlement—the final completion of these contracts for Mr. Shaw and Mrs. Hepburn.

Ques. One minute. Mr. Saul is an attorney, isn't he? He is a Philadelphia lawyer, is he not?

Ans. Yes, a Philadelphia attorney, and he was representing the Pennsylvania Company at the settlement. He and I went up together and spent the night in Pottsville, the night before, and went over to Tower City the next morning in a machine. Mr. Saul looked at the contracts; I had a copy of one and Mr. Bressler, I think, furnished a copy of the other; between us we gave copies to Mr. Saul of both contracts; he looked them over, said it would be all right, the Pennsylvania Company would act as trustee, and I then turned over our copies to them, and a few days later—the final settlement then went through with the Baltimore people, the bonds were all brought in and checked up, and the stock brought in and checked up, what were not there were accounted for, and the Pennsylvania Company held out some money to pay those at a later date. I asked Mr. Saul if he would have that confirmed when he got back home, as to their acting as trustee in the matter. A few days later I received a letter—

Ques. Is this a copy of the letter you received? (exhibiting paper to witness).

Ans. Yes, I received a letter dated September 10th from the treasurer of the Pennsylvania Company, in which he enclosed me a letter.

Ques. Read it.

Ans. This is addressed to me, W. W. Hepburn, etc., (reading letter), signed, "Yours very truly, C. S. Newhall, Treasurer," and the letter enclosed is a letter dated September 10th, 1915, addressed to "Messrs. John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, Tower City, Pennsylvania. Dear Sirs:—We beg to advise you that we have on deposit in a special account the sum of \$8,700, which is to be paid over by us upon satisfactory evidence from you that all of the things required to be done by P. B. Shaw and Jane Shaw

- Hepburn and yourselves, under agreement dated the 23rd day of June and the 5th day of July, 1915, have been completed, whereupon we are to turn over the said \$8,700 to Jane Shaw Hepburn. Yours very truly, C. S. Newhall, Treasurer." That was, I thought, completing the arrangement I had made with Mr. Saul for the Pennsylvania Company to act as trustee for this final distribution. I had gone around to the different banks and obtained from them the orders—
- 10 agreements by which they would send in their bonds to the Pennsylvania Company and have them stamped. There were some discussions as to the actual agreement with the Pennsylvania Company as to the modification of the true agreement which Mr. Shaw had agreed to cause to be executed; that took up some little time. Before the—I believe it was before it was completed or about the time I was ready to complete our transaction, I having had the agreement with the bank, I got a notice from the Pennsylvania Company of an
- 20 attachment of these funds in their possession on account of a judgment that they had against P. B. Shaw that arose out of the \$100,000 loan they had made to Mr. Shaw sometime previous, on which he had deposited \$100,000 of Pennsylvania Marble & Granite Company bonds and \$100,000 of bonds of this electric company up there. That electric company was the company of which I negotiated the sale, and the payment of the bonds which he held—which the Pennsylvania Company held on a loan to Shaw—was made when a sale of that property was made. I had arranged with
- 30 Mr. Packard that he would surrender those bonds—

Ques. Who is Mr. Packard?

Ans. Mr. Packard is president of the Pennsylvania Company—that he would surrender those bonds and take as his payment a certain stipulated sum; it was his portion of the purchase price paid by the Baltimore people. I was doing that to help them in the matter of Mr. Shaw's account so that they would get that much, at least, paid

off, and he was anxious to have me go ahead and complete the sale. That arrangement I had made with Mr. Packard early in the year, about February. After that time—in February—the loan still stood in Mr. Shaw's name. A few months after that, before I had completed arrangements, the Pennsylvania Company took over ownership of those securities, Mr. Shaw not being able to meet the loan, and after they had done that they notified Mr. Shaw of the sale and taking over ownership of these securities, and I called up Mr. Packard again and asked him if it would still be satisfactory for me to go ahead on this sale, and he said it certainly would, that he would be very anxious to get the same amount that he had agreed to before, so I thought I was assisting them to that amount in the sale. When I got the notice of this attachment it was a complete surprise to me, and I went with the papers to my brother, C. J. Hepburn, who had been acting for him, and I told him that my thought in the matter—

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Ques. No; don't tell us that.

20

Ans. Well, following my talk with him I went down to Mr. Packard and told him the whole story, what I had done about securing the payment for them; I told him that these certificates were Mrs. Hepburn's, of that there was no question, the books showed it; I was perfectly willing to lay down everything before him; if there was any doubt in his mind that they Mrs. Hepburn's I would show him anything that he might call for; that I did not think any person acting in a fair way could come to any conclusion but that they were Mrs. Hepburn's certificates; if they were not her certificates I did not want anything to do with them; I said, "All you can do in this matter is to delay me from getting this money for Mrs. Hepburn. You have got your money, I have arranged that for you, and I don't think it is fair to put her in that position." He said, "No, I don't think so either, if that is the case," but he said he had an attorney

30

in the matter and you have to abide by your attorney or it opens you to criticism, and asked me to go see Mr. Saul and explain the whole matter to him. I then went to Mr. Saul, told him I had been to Mr. Packard; I said there was nothing about this transaction I was not perfectly willing to show to him; I asked him if I couldn't talk to him about that and show him all the evidence; he said, "I don't think you had better do that, because I don't think it will change my opinion at all." And I said, "Well, I am perfectly willing to do it whether it changes your opinion or not; I think if we can sit down here—I have been in Mr. Johnson's office for a good many years and I don't think it is necessary to go into any further litigation; I want to stop litigation." Then I started in to tell him the whole story, how Mrs. Hepburn had advanced these securities to Mr. Shaw, and how Shaw in turn had given her this stock on account of her advances; told him what the books would show and offered to bring them over and show them to him. He listened to all I had to say, and said, "Well, why don't you make some settlement?" I said, "What do you mean, Mr. Saul?" He said, "Why don't you pay the Pennsylvania Company? I think you can settle this for very little." I says, "What do you mean? How much?" He says, "That I am unable to tell you, maybe fifteen hundred." I said, "You mean I should pay the Pennsylvania Company fifteen hundred in order that I should get Mrs. Hepburn what belongs to her?" He said, "I think you can settle it that way." I said, "No, it either all belongs to the Pennsylvania Company or none of it." He said, "Well, then, just as you like; I told you when you started that you couldn't change my opinion at all." I think that is about the whole story.

Cross-examination.

By Mr. Connelly:

Ques. You knew of the making of the note for \$100,000 by Mr. Shaw to the Pennsylvania Company?

Ans. I certainly did.

Ques. That was in June, 1912?

Ans. I couldn't say from my own knowledge just what date; I would have to refer to the books.

Ques. At any rate, it was a long time prior to 1915, some time prior?

Ans. Yes.

Ques. And you knew that note had not been paid?

Ans. I did.

Ques. Did you not also know that Mr. Shaw, in 1915, was insolvent? 10

Ans. I did not.

Ques. Was he not in fact insolvent?

Ans. He was not.

Ques. In May, 1915, Mr. Shaw was perfectly solvent, was he?

Ans. I so considered him.

Ques. If he was perfectly solvent why didn't he pay his debt?

Ans. Well, sometimes people are perfectly solvent and matters are postponed and have to be held up,—by both sides. 20

Ques. Is he in that condition now?

Ans. I think so. I don't say that he is perfectly solvent to-day. He has some debts that he can't pay. I don't know when he will be able to pay them; I think possibly he will.

Ques. As a matter of fact, he could not have paid this note in May, 1915, could he?

Ans. He could not. That was the reason I acted for him and tried to get the money to the Pennsylvania Company by the sale of the company. 30

Ques. You acted as Mrs. Hepburn's agent in this matter throughout, did you not?

Ans. I did.

Ques. Were you present in Harrisburg in May, at the time of the hearing?

Ans. I was not.

Ques. Are you also a stock broker?

Ans. I am not.

Ques. Do you deal in stocks,—securities?

Ans. I do not make a business of dealing in stocks and securities, no, sir.

Ques. But as a part of your business you do constantly deal with stocks and securities,—in the purchase and sale of stocks, do you not?

10 Ans. I deal in the purchase and sale of properties, not so much in securities.

Ques. But that necessarily involves the transfer of stocks?

Ans. I do not have very much to do with the transfer of stocks, no, except the purchase of stocks,—yes.

Ques. Aren't you connected with some stock brokerage house?

Ans. I am not; I act for a number of different stock houses.

20 Ques. Well, in May, 1915, you were acting for a number of different stock brokerage houses?

Ans. I was then, yes.

Ques. And you knew that revenue stamps had to be attached to stock certificates when they were sold, did you not?

Ans. It had escaped my recollection entirely in that connection.

Ques. But you were dealing in those things in 1915?

30 Ans. No, I don't think I ever handled the actual transfer of stocks. When that matter comes up it is usually taken care of by the cashier or some person in connection with the banking house with which I am connected.

Ques. So that you don't see the stock certificates?

Ans. I very seldom do.

Ques. You mean to say that you deal with electric properties involving thousands of dollars and not the transfer of stock in connection with the arrangement?

Ans. With the sales and purchases of these stocks but I very seldom handle those stock certificates actually. I don't think there is another single case of more than one in the last year where I actually handled the stock myself. That is done by the cashier or some person in connection with the banking house in which I have connection.

Ques. When were these certificates signed by Mr. Shaw?

Ans. These were signed by Mr. Shaw when he handed them to me and my impression is that I witnessed them at that time. 10

Ques. Can you fix that date?

Ans. I can only fix it as I did before, that it was within a day or two after the trial at Harrisburg; I think that trial was on May 14th.

Ques. And it was after that time that these were delivered to you?

Ans. Just after, immediately after that time, when I took the matter in my own hands and undertook to arrive at settlement.

Ques. But the Revenue stamps were not affixed until October 28th, 1915? 20

Ans. That is right.

Ques. Did you sign these at the same time that Mr. Shaw signed them—did you witness them?

Ans. My impression is that they were signed by Mr. Shaw as he handed them to me and that I sat right down in his presence and witnessed them.

Ques. With the same pen?

Ans. My pen, yes; I use a fountain pen. 30

Ques. And did he use the same pen?

Ans. No; no person uses my pen.

Ques. When did Mrs. Hepburn become the owner of this certificate number 39?

Ans. Mr. Shaw agreed to give Mrs. Hepburn, I think, 380 shares. He turned over what he had to me in May, and there was some twenty shares or more

in the First National Bank that he had agreed to give to her, but he couldn't make delivery of that, and I think this one share that stood in Mr. Starr's name—I am not sure whether that was turned over to me then or at a later date, I wouldn't want to say positive about that one share. Mr. Shaw had agreed to give her more than this; what he gave to her at that time wasn't the complete contract. I went to the First National Bank of Williamsport and found that they would have to have something on their account, they considered
 10 that certificate was collateral to some things that Mr. Shaw had, and Mr. Shaw couldn't make delivery of that stock.

Ques. On June 23rd, 1915, you supposed—

The Vice Chancellor: How many shares are there, Mr. Connelly?

Mr. Connelly: 350, 349 in Shaw's name and one in
 20 Judge Starr's.

Ques. June 23rd, 1915, however, you understood that Mrs. Hepburn owned 380 shares of stock, did you not?

Ans. Mr. Shaw had agreed to give her 380 shares of stock, yes.

Ques. And you understood that she actually owned 380 shares of stock?

Ans. Yes.

30 Ques. Why did you provide in the agreement, then, that if she could deliver only 350 that she would get a proportionate price—proportionate division of that \$8,700?

Ans. Why, because it might have been possible that Mr. Shaw could not have delivered it all and I didn't want the agreement to fall by reason of his not delivering every share. I knew that he had a certificate in the First National Bank of Williamsport that I hadn't ar-

ranged for yet, and I wanted the agreement flexible in that way, and I told them frankly exactly how many shares I could deliver.

Ques. You did know that she actually at that time owned 350 shares?

Ans. I considered that she owned the 380 and I had in my possession the 349 and I think I had that other share; I am not positive about that.

Ques. That is, when Mr. Shaw said to Mrs. Hepburn "I will give you 380 shares of this stock" you considered that she became the owner of it? 10

Ans. I did.

Ques. Where did this transfer take place?

Ans. In Philadelphia.

Ques. Of the stock from Mr. Shaw to Mrs. Hepburn?

Ans. In Philadelphia.

Ques. At whose office—yours?

Ans. My office. Mr. Shaw brought them down from Williamsport.

Ques. Is Mr. Shaw in the habit of giving Mrs. Hepburn 350 shares of stock at a time? 20

Ans. He has given her a god deal more than that before, but this was in payment of a loan that she had made to him.

Ques. And at a time when you knew that Mr. Shaw could not pay a note of a hundred thousand dollars that was held by the Pennsylvania Company?

Ans. I knew he couldn't pay it immediately.

Ques. You knew that it had been due for a long while, didn't you? 30

Ans. It was run for a year at a time, it had been renewed, there had been no trouble about it, renewed right along.

Ques. It is a demand note, isn't it?

Ans. Yes, but no demand had been made on it.

Ques. How do you know that no demand had been made on Mr. Shaw for the payment of that note?

Ans. In January, when Mr. Shaw gave these securities to Mrs. Hepburn, I was pretty familiar with Mr. Shaw's accounts and I remember of no demand being made on that note at that time.

Ques. Is Mr. Shaw in Camden to-day?

Ans. Not to my knowledge.

Ques. He is not expected to be present to-day, is he?

Ans. I don't know. You will have to ask the attorney about that.

10 Ques. Did you say that the hearing at Harrisburg was May 18th?

Ans. What?

Ques. Did you say that the hearing at Harrisburg was May 18th, 1915?

Ans. I thought it was May 14th, that is what I said.

Ques. Do you recall what day of the week it was?

Ans. No, I do not.

Ques. Would you be able to if you saw a calendar?

20 Ans. I guess I would, yes.

By Mr. Stockwell:

Ques. How do you fix the date of the hearing in Dauphin county?

30 Ans. Well, that came up shortly after my brother was taken sick with typhoid. He had been handling, as I said, this different litigation that Mr. Shaw had gotten into, and after they pronounced his case typhoid I saw that everything would fall on me, and I hadn't followed up the different steps that had gone through, and this hearing at Harrisburg was, I think, the next transaction in these different suits, and my younger brother consulted with me about what to do and that brought the matter to my attention, and, as I told you before, that I saw that the matter was so awfully involved I would have to get on it myself if I was to save anything out of it.

By Mr. Connelly:

Ques. May 18th, 1915, was on Tuesday. Do you recall that that was the date when the hearing took place at Harrisburg?

Ans. I really couldn't tell you. My recollection was it was about the 14th. I don't know whether it was the 14th or 16th or 18th; I don't know positively; I would have to refer to the records.

Ques. Well, now, can you tell us exactly when these stock certificates came to your possession for Mrs. Hepburn? 10

Ans. It was immediately after that hearing, whatever the date of that hearing was.

Ques. And did you know that the next day after that hearing Shaw's stock which he had put up as collateral for this note—bonds, rather, which he had put up as collateral for this note, were sold in accordance with a notice given to him dated May 7th?

Ans. I don't know about—I couldn't tell you about those dates. I know that the Pennsylvania Company, as I told you before, did transfer those bonds; that when I found that they had transferred them, as I told you before, I called up Mr. Packard, and Mr. Packard said it would make no difference; he was still perfectly willing to take what he had agreed to take on them and hoped Mr. Shaw would be able to get his affairs in shape. 20

Ques. Did you know of a demand made on Mr. Shaw May 7th, 1915, by the Pennsylvania Company, and a notice that unless the note was paid on or before May 19th, 1915, the bonds would be sold? 30

Ans. I knew that the bonds were sold; now, I don't know anything about those dates; I couldn't tell you except by referring to the original papers.

Ques. Did you know that any demand had been made in May, 1915, on Mr. Shaw?

Ans. I didn't know it.

Ques. Did you know that the stock was to be sold—the collateral was to be sold May 19th?

Ans. I didn't know that that collateral was to be sold or was threatened to be sold at the time. I got these certificates from Mr. Shaw. Mr. Shaw was only holding them because he had not brought them down to Mrs. Hepburn; he had agreed to deliver those in January.

Ques. So that when you got the certificates of Mr. Shaw you knew from him that a notice had been—

10 Ans. I told you distinctly that I did not know it. I knew that some time after that, and I immediately called Mr. Packard up, as I said originally, and asked him if it would make any difference in the sale of that property. He was very nice about it and said it wouldn't, and hoped Mr. Shaw would be able to arrange his affairs.

Mr. Connelly: I understood the witness to testify exactly opposite.

20 The Vice Chancellor: If there is any doubt about it you may have the testimony read, but my understanding of what the witness said was that at the time he received this stock from Mr. Shaw he had no notice of the proceeding of the sale of that collateral.

The Witness: That is correct.

Mr. Connelly: That is exactly opposite to my recollection of the preceding answer.

30 (Record read by stenographer beginning with first question on page 32 hereof and ending with second answer on said page.)

Ques. These two agreements, that of June 23d, 1915, between Mrs. Hepburn and Mr. Pfeiffer and others, and that of July 9th, between Mr. Shaw, Mr. Pfeiffer and others, are the result of your negotiations leading to the sale of the stock claimed by Mrs. Hepburn?

Ans. They are.

Ques. Why was this placed in two agreements instead of in one, as originally prepared?

Ans. Because Mr. Shaw, as I said before—Mr. Shaw's attorney, Seth T. McCormick, objected to Mr. Shaw being party to an agreement for the sale of securities which he did not own and thought it should be a separate agreement, and then the agreements had to be separated.

Ques. And the first agreement which was not executed was an agreement between whom?

Ans. The first agreement was an agreement with me, 10
to sell to me these shares, 380 odd shares of United Water, Gas & Electric Company, and that I was to have discontinued certain suits of Shaw's and certain arrangements with the water company.

By Mr. Stockwell:

Ques. What was the date of that?

Ans. That was the agreement I made the night of June 20
2d up in Tower City with these people.

By Mr. Connelly:

Ques. What I refer to is an agreement which was prepared and taken by you to Tower City and which was not executed?

Ans. You asked me for the first agreement.

Ques. I did say the first.

Ans. Well, that is the first agreement.

Ques. There was an agreement, a draft of agreement, 30
prepared which you took to Tower City and it was not executed because of a telephone call which you received while there?

Ans. Mr. Shaw telephoned me that Mr. McCormick would not agree to his executing that agreement.

Ques. Now, in that agreement who was to sell the 380 shares of United stock?

Ans. I think I was to sell the stock in that agreement. I would have to refresh myself by that agreement; I haven't got it, I haven't seen it; I don't know just what the terms of it were.

Ques. Haven't you any recollection as to who was to sell that stock?

Ans. I made the first agreement to sell, and that was a written agreement.

Ques. That was the June 2d agreement?

- 10 Ans. That was on June 2d, I agreed to sell this stock. I explained that Mrs. Hepburn was the owner of the stock, and recited Mr. Shaw's note for \$10,000. The suits were brought in Mr. Shaw's name, and I had the authority to act for Mr. Shaw, in his name, and I made an agreement covering the whole business in my name, agreeing to have the suits discontinued, the surrender of the note, &c. Following that agreement which I made there on the night of June 2d—it was torn up and put in one agreement here by Mr. Williams, or some person, in Philadelphia anyhow. When Mr. McCormick saw that
20 agreement he refused to have it that way.

By Mr. Stockwell:

Ques. Haven't you that agreement of June 2d?

Ans. I have it here in the room, yes.

Ques. I wish you would produce it.

By Mr. Connelly:

- 30 Ques. There was also an agreement of June 3d, was there not, between the same people agreeing to purchase the stock from you?

Ans. We made two or three agreements after the original agreement I made there that night until the final one was executed, and really I haven't refreshed my mind with any copies of them and I wouldn't want to say positively just what they were until I saw them.

Ques. Do you recall the date of your visit to Tower City?

Ans. I recall it, yes, and my date is fixed by the date of this agreement, the original agreement, which was June 2d.

Ques. No, your subsequent visit to Tower City at which you undertook to have executed an agreement?

Ans. Yes, I couldn't,—I don't know how I could fix the exact date except I would look over some papers.

Ques. The latter part of June, was it not? 10

Ans. Yes, I think so.

Ques. A few days prior to the execution of the agreement of June 23d?

Ans. Yes.

Ques. And you don't recall whether you were to sell the stock according to that agreement which was not executed or not,—is that true?

Ans. I really wouldn't want to say positively what the terms of that agreement were without looking it up. I say, it was changed back and forth two or three times and corrections were made in it at Williamsport and corrections again at Philadelphia. 20

Ques. Didn't you know that a part of the collateral which Mr. Shaw had given accompanying this note had been sold in December, 1914?

Ans. I did not.

Ques. Have you ever seen this bill in equity?

The Vice Chancellor: Did he know it at what time, do you mean? 30

Ques. Did you know it in December, 1914?

Ans. I have no recollection of it; I don't know.

Ques. Did you know it at any later date?

Ans. I really don't recollect it; I might have known it but I have no recollection of it at all.

Ques. Did you know it when this stock was delivered?

Ans. I certainly did not. I had no recollection of it at that time. The first I knew of it I immediately called Mr. Packard on the phone and asked him if it would make any difference in the sale of that property and whether he was still willing to take the same price for those securities. The first I heard of it was in the midst of these negotiations with Baltimore, and I called him up at once.

Ques. Do you recognize this paper (exhibiting paper to witness)?

10 Ans. Well, that was the foreclosure proceeding of the Pennsylvania Marble and Granite Company bonds, I think.

Ques. Before this bill was filed had you not attended some meetings of the Pennsylvania Company in connection with the Marble Company transaction?

Ans. Before that bill was filed?

Ques. This bill filed on or about March 11th, 1915, yes.

20 Ans. I attended a number of meetings down there of bondholders' committee of the Pennsylvania Marble and Granite Company and my impression was that they were all after the foreclosure proceedings had taken place and the bondsolders' committee had been appointed; I might be mistaken about that; it might be about that time that I attended some meetings down there, but I had no idea at that time that there was any sale—you are talking, as I understand it, of a sale of Mr. Shaw's securities held by the Pennsylvania Company as collateral to his note?

30 Ques. That is it.

Ans. Well, I had no information.

Ques. Do you recall a notice of which that is a copy (exhibiting paper to witness)?

Ans. That was a part of the proceedings, of the foreclosure proceedings of the Pennsylvania Marble and Granite Company bonds; yes, I recall that.

Ques. Did you have anything whatever to do with this notice?

Ans. How do you mean—have anything whatever to do with it? I was manager of the Pennsylvania Marble and Granite Company at that time.

Ques. Did you have that signed by Mr. Shaw?

Ans. Did I have that signed?

Ques. Or know that he was signing it?

Ans. Yes, I think I knew that he signed it; I knew that.

Ques. Did you present it to the Pennsylvania Com- 10
pany?

Ans. I did not.

Ques. Did you know that it was presented to the Pennsylvania Company?

Ans. I had nothing to do with it—I don't think; I think that was done by the attorneys in the matter, but I knew it was done; that was a foreclosure proceeding of the Pennsylvania Marble and Granite Company.

Ques. And you knew at that time that the Pennsyl- 20
vania Company owned \$50,000 of the Marble Company bonds?

Ans. I certainly did; I knew that they held a hundred thousand dollars of the Marble Company bonds as collateral; I didn't know that they considered themselves the owner of these bonds.

Ques. You knew that they signed?

Ans. I knew, as all the other banks did, the banks signed them because they were the holders of the bonds as collateral. 30

Ques. Mr. Shaw signed?

Ans. Yes; so did all the other banks.

By Mr. Hepburn:

Ques. Where did the Pennsylvania Company sign the bonds?

Ans. That was the same form of transaction that had taken place by all the banks that held these bonds as collateral.

By Mr. Connelly:

Ques. This collateral was \$100,000 of Pennsylvania Marble and Granite Company bonds—that is correct, is it—collateral to this note?

10 Ans. That is my understanding, yes.

Ques. And Mr. Shaw also at the time had \$50,000 of these bonds individually, did he not?—in his own possession, under his own control?

Ans. I don't know that he did; I wouldn't want—I would have to refresh my memory about that. He signed for fifty there.

Ques. You think that is correct, do you not?

Ans. Sure, I think it is correct.

20 Ques. And the Pennsylvania Company signed as owner of \$100,000 of bonds?

Ans. I don't know that that signifies that they were the owner of \$100,000 of the bonds. They sign themselves as party to the agreement to deliver \$100,000 of the bonds in connection probably with an order which they had on Mr. Shaw authorizing them to do that. That is the usual procedure in the case.

Ques. Mr. Shaw signed \$50,000, did he not?

Ans. Yes, he did.

30 Ques. The next reads "Pennsylvania Company for Insurance on Lives, &c., \$100,000"?

Ans. It reads that way, but I don't so take it—that they were the owners of these bonds.

Ques. You take it that that meant that they were holders as collateral?

Ans. Yes; and they probably executed that agreement under authority given them by Mr. Shaw to do it.

Ques. Why didn't the other banks sign it that way?

Ans. I think some of the other banks did, I think— what is that First National Bank there, the first one? The First National Bank of Williamsport as holder as collateral of said bonds, \$70,000. Different banks have different ways of wording it; some follow one method and some another.

Ques. How much was Mr. Shaw to get out of this \$8,700?

Ques. How is that?

Ques. How much was Mr. Shaw to get out of the \$8,700?

10

Ans. You mean how much was he to get?

Ques. Yes.

Ans. He wasn't to get anything. That is what I told Mr. Saul, that that money was Mrs. Hepburn's; I didn't think I had to pay the Pennsylvania Company fifteen hundred or two thousand dollars to get what actually belonged to her.

Ques. Didn't Mr. Shaw, in your presence, say to the president of the Pennsylvania Building Company, the day before the settlement was to take place under this agreement, that he was to get some money out of this settlement to pay his rent?

20

Ans. You mean pay his rent for what?

Ques. In the Pennsylvania Building.

Ans. Mr. Shaw never paid any rent in the Pennsylvania Building; he never owed or paid any rent in the Pennsylvania Building.

The Vice Chancellor: Direct your answer to the other part of the question.

30

(Question repeated.)

Ans. I certainly don't know of any such thing.

Ques. You didn't hear any such conversation?

Ans. I did not, because, as I say, Mr. Shaw never owed any rent in the Pennsylvania Building.

Ques. Did any of the companies with which Mr. Shaw was associated owe rent?

Ans. The Pennsylvania Marble & Granite Company and myself personally at different times may have owed rent in the Pennsylvania Building but Mr. Shaw never did.

Ques. Well, did Mr. Shaw, acting for any company or any individual with which he was associated, make any such statement in your presence?

Ans. He certainly did not.

10

By the Vice Chancellor:

Ques. Or did he make any statement in any way indicating that that money was going to him?

20 Ans. I never heard him. Mr. Shaw's anxiety in this matter was to see that the Pennsylvania Company got a payment on account of his loan, that the suits were finally discontinued and the \$10,000 note, which these people held from him, was canceled. He had gotten into some litigation up there in this water company, the Pennsylvania Commission had condemned some of it, and there was money owed back and forth in that which some person would have to put up, and the interest on the water bonds which a number of different banks—some six or eight different banks held these water bonds, which are a prior lien to this stock, as collateral to Mr. Shaw's loan, and Mr. Shaw was anxious to have the interest on those bonds paid; there was a hundred thousand dollars four per cent. bonds on that; and unless this thing was settled that interest would have gone by; that interest was due the first day of July, 1915, and all those things were pending and Mr. Shaw was anxious to have it carried through on that account.

30

By Mr. Connelly:

Ques. Mr. Hepburn, I show you letter of May 13th, 1915, to Harper T. Bressler, and ask you if that is your signature?

Ans. That is my letter.

Mr. Connelly: I offer that for identification only.

(Said letter marked Exhibit D-1 for identification, Pennsylvania Company.)

Ques. Also letter of May 21st, 1915, to Harper T. Bressler. Is that your signature?

Ans. It is.

(Said letter marked Exhibit D-2 for identification, Pennsylvania Company.) 10

Ques. Also letter of June 21st, 1915, from you to Harper T. Bressler?

Ans. Yes; that is mine.

(Said letter marked Exhibit D-3 for identification, Pennsylvania Company.)

By Mr. Starr: 20

Ques. Mr. Hepburn, on what day was the deposit made of the \$8,700 with the Pennsylvania Company as trustee?

Ans. It was the date of that final settlement in the bank in Tower City. I would have to refresh my recollection as to the exact date.

Mr. Hepburn: Mr. Starr, Mr. Saul and myself have just agreed that that was on September 8th. There was no deposit made; it was just withholding the funds. 30

Mr. Stockwell: It is agreed that it was September 8th.

Ques. Then, as I understand it, the Pennsylvania Company came into possession of this fund of \$8,700 as trustee, as shown by the letter which was subsequently given by Mr. Newhall, dated September 10th?

Ans. Yes.

Ques. Now, on that date where was the note for \$10,000 which Mr. Shaw had given to Messrs. Bressler and others, dated the 3d of January, 1914?

Ans. As far as I know it was in their possession.

Ques. In the possession of the Tower City people?

Ans. Yes.

Ques. That was the note which was to be surrendered under the terms of the agreement of the 9th of July?

10 Ans. Yes. I had copies of my discontinuance notices with me but they hadn't taken that up with their people, nor had the bonds been stamped, and I believe that note was one of the things that could have probably been delivered.

Ques. If the settlement had gone through in accordance with the contract that note was there?

Ans. I believe it was; I knew nothing to the contrary.

20 Ques. Now, the discontinuance of the various litigation between the Tower City people and Mr. Shaw—which of the discontinuances were lacking on that day?

Ans. I think I had all of mine there; I don't think they had gotten any of theirs; that is my recollection; they might have had one or two with them but they didn't have them complete.

Ques. Mr. Shaw had a suit in New Jersey, an equity suit, against the United Company and also against the Sterling Electric Company?

Ans. Yes, sir.

Ques. You had my discontinuance?

30 Ans. Yes.

Ques. In that suit, as attorney?

Ans. Yes, I had yours; I think I had them from Harrisburg.

Ques. Now, have those discontinuances been obtained from all sources so that if the matter is settled they can be delivered?

Ans. I have them all, yes.

Ques. And were those discontinuances deposited in the Pennsylvania Company also or were they retained by the respective parties?

Ans. After the notice of the attachment then I did nothing further with carrying out my contract.

Ques. Prior to the notice of the attachment, on the 8th of September, when the money was retained by the Pennsylvania Company, what became of the discontinuance papers themselves?

Ans. I have them all and nothing was missing prior to the 8th of September, as I recollect,—the settlement was 10
on the 8th of September.

Ques. Well, on the 8th of September, at the time of the settlement, what became of the various papers?

Ans. We each kept our own papers; we turned over nothing, as I recollect it, that date to the Pennsylvania Company except the copies of the various contracts, on their agreement to act as trustee, and they were to verify them; then we had some negotiations about the change in that mortgage condition.

Ques. Now, those papers are all in shape to be delivered 20
back and forth in case the sale goes through of the stock?

Ans. As far as Mr. Shaw is concerned they are; I don't know about the others.

Ques. Now, with reference to the sixth clause in the agreement of July 9th, as to the endorsement on the bonds issued under the trust agreement of the United Company.

Ans. I have an agreement dated at that time from the holders of every one of those bonds agreeing to that endorsement. 30

Ques. Were the bonds there at the time of the settlement so that the settlement would have gone through?

Ans. No, the bonds were not there at the time of the settlement. We had agreed that the bonds could not be marked in that short time to make the settlement; in order not to delay the settlement we went ahead with the settle-

ment and agreed with the Pennsylvania Company to act as trustee for the balance of it.

Ques. Now, at the present time, have all of the bondholders, the holders of the bonds issued under the United Company's trust agreement, assented to the modification as provided in paragraph 6 of this agreement?

Ans. At the date of that attachment made by the Pennsylvania Company I had in my possession written agreements—written consents to that change.

10 Ques. So that all those matters contemplated by the sixth section of the agreement are capable of being carried out at the present time?

Ans. I believe they are now; they certainly were then. I would have to go back to some of the banks. It has been sometime ago. I don't know that that condition has been changed at all.

Ques. Wasn't there a release to be executed at the same time?

Ans. By Mr. Shaw?

Ques. Yes.

20 Ans. He was prepared to do that.

Ques. And that can be done at any time?

Ans. Yes.

Ques. In order to carry out the terms of this agreement?

Ans. Yes, that can be done.

30 Ques. So that, as I understand it, all of the conditions contemplated by the agreement of July 9th, 1915, are capable of being carried out in case Mrs. Hepburn is able to turn over to the Tower City people this stock in accordance with her agreement?

Ans. I believe that is the case, Judge. It was the case at the time of that attachment; I am not sure whether it is the case to-day; I wouldn't want to be perfectly positive.

Ques. Did you exhibit to the Tower City people on the 9th of September, 1915, at the time of the settlement, these discountinances of these various suits?

Ans. Whether I exhibited them or not, I told them I had them there, but my recollection is they said they hadn't gotten those from their attorneys. I don't know that I showed them to them, but I think I told them I had them there. I did have them with me.

Ques. These gentlemen from Tower City purchased this stock in good faith, did they not?

Ans. I certainly believe they did.

Ques. And there is nothing to indicate but what they believed they were dealing with the owner of the stock when they made the contract with Mrs. Hepburn? 10

Ans. Yes; I explained to them on the night I was there, the first talk I had, told them who was the owner of the stock—June 2nd; told them just how the different matters and different parties stood.

Ques. And it was their money?

Ans. It was their money.

Ques. That was deposited or retained by the Pennsylvania Company?

Ans. Yes; they would have gotten the money if it hadn't been retained by the Pennsylvania Company. 20

By the Vice Chancellor:

Ques. Mr. Hepburn, what gave rise to this agreement between Mrs. Hepburn, your wife, and her father, of January, 1915? What occasioned it? What brought it about? Let me see if I understand the situation: She had loaned him money on securities prior to that time; there had been an indebtedness of some long standing. What gave rise to the execution of the written agreement wherein he was to transfer to her certain stock? 30

Ans. There never was any written agreement.

Ques. It was a parol agreement?

Ans. Yes.

Ques. Well, what gave occasion to the agreement, whether it was written or merely a parol agreement?

Ans. Well, Mrs. Hepburn had been getting anxious over her securities, and the question came up two or three times about the return to her of the Pennsylvania Company stock and the bonds, and Mr. Shaw had told her he had some matters pending that he hadn't been able to get adjusted yet, but that he had some United Gas, Water and Electric Company stock he considered a good security and he would give her that on account of the balance until he could make up the balance to her, and it just came about in a talk
10 about the—

Ques. Was there a valuation agreed upon that she should credit for the stock?

Ans. No, there was no valuation. He said "I will give you this on account of what I owe you." I don't know myself what it was worth; it probably had a valuation.

Ques. Most stocks fluctuate more or less. What was contemplated with reference to it?

Ans. Well, he thought it was worth about \$20,000.
20 Ques. Was that mentioned?

Ans. It was mentioned, yes. He had some arrangement for the purchase of it with these people.

Ques. Then the agreement at that time was more in the nature of an offer upon his part to do it—or if it wasn't, what was it?

Ans. We had discussed several times about whether he would do it or not; he thought if he got these matters straightened up he would have to give her back her stock, and he finally said "I will give you this
30 stock. I will turn this stock over to you on account of the other stock that I have gotten of you," and she said "All right," and it was left up to me afterward.

Ques. This was in January?

Ans. Yes, it had been talked over, but in January he finally decided "Well, I will give you this United Water, Gas and Electric Company stock."

Ques. Then you knew at that time that he was having some pecuniary embarrassment?

Ans. I knew that he was delayed in being held up on some payments that were due, and in some negotiations that he had—this Pennsylvania Marble and Granite Company.

Ques. In view of that why didn't you have him give you the stock at once, instead of having the matter lay until some months later—May?

Ans. That was probably neglect, jointly of Mr. Shaw and myself. He was going over these things and I was busy on a lot of other things. When finally I did take the matter up myself then I insisted on having possession of the stock. He said once or twice he would bring it down, but he was travelling over the country. 10

Ques. Where did he live with reference to where you lived?

Ans. He lived in Williamsport, Pennsylvania, and I lived in Villa Nova.

Ques. Did you see him frequently?

Ans. Usually saw him once every couple of weeks. 20

Ques. Not oftener than that?

Ans. Beg pardon?

Ques. Not oftener than that?

Ans. Why, sometimes he would be away for three or four weeks; sometimes once a week, sometimes a month.

Ques. What was his business?

Ans. He lived in Williamsport, Pennsylvania, and his business was chiefly electric properties and an iron property in Columbia; he had an interest in the Pennsylvania Building, in Philadelphia. 30

Ques. And his suggestion in January was that this stock was probably worth \$20,000?

Ans. Yes.

Ques. What was the amount that he owed Mrs. Hepburn at that time?

Ans. She had advanced him 350 shares of Pennsylvania Building stock which we considered worth about \$35,000; it was stock, I think, of the par value of \$50 a share; it had been paying about eight per cent. and we considered it a very valuable stock; and also \$10,000 Pennsylvania Marble & Granite Company bonds that we thought were worth par.

Ques. Making a total indebtedness of how much?

10 Ans. The bonds had been foreclosed on the property but we believed the property would eventually realize the bonds. It was a property that was capitalized, if at all, at about fourteen.

Ques. That would make the aggregate about how much?

Ans. About \$45,000.

20 Ques. Why wasn't some provision made for securing the balance? If he was having more or less embarrassment in his pecuniary affairs why did he suggest that he pay on account \$20,000 without in some way securing or providing for the payment of the balance?

Ans. Why, she wasn't pushing for it at all; it was only a question of just what he did, and I suppose he wasn't strapping himself any closer than he had to. It wasn't a question of her pushing him for the obligation at all.

Ques. Was there any market for this stock that was turned over to you?

Ans. The United Water, Gas & Electric Company?

Ques. Yes.

30 Ans. I don't know that there was any market for it except in just the way I made a market for it, that is, in negotiating the sale of the property. There was no market value to it at all.

Ques. It wasn't a listed stock?

Ans. No; it was just a company up in Lykens Valley, Pennsylvania, that no person outside of the valley ever heard of.

Ques. Didn't you have any anxiety as to the balance of this indebtedness due to your wife?

Ans. Not between her and her father, no. If it was convenient for him to pay it that was all; she certainly wasn't pushing him.

Ques. Then later, in May, when it was turned over was nothing arranged between you as to the amount of the credit?

Ans. No. I didn't know in the first place what I would realize on it. I went up there to get out of the suits; I didn't know whether I would realize anything or not. 10

Ques. Then were you not to credit your father-in-law with only the amount you realized out of it? Was that to be the basis of the credit?

Ans. That is, I mean, it was never said in just so many words back and forth "I will give you credit for this." Mrs. Hepburn doesn't keep books. Mr. Shaw kept his books. It was never said by Mrs. Hepburn "I will give you credit for it." The question was, I was to go in and see what I could do to protect her interest in the stock. I didn't know until I got up there whether I could get anything out of it or not. 20

Ques. Wasn't it more nearly in the nature of a collateral,—that you were to make a credit of only what you realized out of it? Wouldn't you regard it as a collateral security?

Ans. No; he gave it to her outright, if she got anything more than the loan—that question wasn't raised, what the balance was to be or when he would pay it or anything about it. 30

Ques. Was nothing said more definite than what you have testified to at the time the stock was actually handed to you by your father-in-law?

Ans. Except that I said that I will have to get into this. "You have started a lot of litigation." I advised him to settle it and settle it in the best way he could, and he finally agreed with me to let me go up there and act for him.

Ques. I mean at the time the stock was handed to you.

Ans. That is what I say, at the time he handed the stock to me I said "I will have to get into the thing myself," and I did. "You had better turn it over and make a point of delivering it to me." And he said "I will do it," and he brought the stock down from Williamsport. I didn't know whether it would be necessary to deposit the stock or what, and I thought I ought to have it in my possession so that any agreement I made with them I would be able to carry out.

10 Ques. Wasn't there an understanding between you, direct or indirect, express or implied, from your relations as father-in-law to son-in-law, directly or indirectly, to the effect that while this stock was being turned over to you he should still have some possible interest in the stock or in its future?

Ans. That he should have?

Ques. Yes, that your father-in-law should have?

Ans. Only in so far as he knew what should be done with the matter so that Mrs. Hepburn would realize the most there was in it. He had gotten quite involved in this litigation and the stock stood in his name, and he took these different actions over here in Jersey and up in Pennsylvania because he believed that he was protecting her interest in it. Now, there was nothing else implied further than that.

Ques. Then if it should transpire in this suit that Mrs. Hepburn does not get title to this stock, is unable to maintain a title to this stock, there will be no credit to your father-in-law on the indebtedness which he owes your wife; is that correct?

30 Ans. I don't know how that would finally come out. That is a question we have never contemplated.

Ques. Isn't the agreement between you definite enough to cover that feature?

Ans. The agreement was that he gave the stock to Mrs. Hepburn. The possibility of the fact that she never

could prove title to it has really never occurred to us. It is only a question of delay. I have never thought of it any further than that. I so stated to Mr. Packard and to Mr. Saul. Eventually I don't see how possibly there could be any question. It was hers, he gave it to her and she had possession of it, and I never even talked to my attorney, my brother, about eventually she not being able to prove title to it, and I haven't considered it at all.

Ques. What is your father-in-law's pecuniary condition at this time? 10

Ans. Well, his matters are pretty badly tied up. He has some very large interests in the Pennsylvania Building and the Columbia Iron Company at Columbia, and things are improving, and we hope that they improve rapidly enough to enable him to wind up his affairs satisfactorily. I thought I was helping the Pennsylvania Company very materially in this case in the liquidation of part of their loan; I was acting also for them in the matter, I thought.

Ques. Now, wasn't this stock handed to you by your father-in-law to enable you to carry through these negotiations which you were having, the idea being that should it be necessary you would have these certificates in your possession in order to carry out the contemplated agreement? 20

Ans. I wasn't in the negotiations until he handed me the stock; I took it up then for the first time.

Ques. I thought you said the occasion for his handing it over to you in May arose from the fact that he desired that you should carry out this settlement negotiation? 30

Ans. After the agreement in January Mr. Shaw went ahead. I did then try to arrange for the sale of the electric property. He was looking after the water property. These people came over from Baltimore and made two or three offers for the property and they got in some disputes up in Tower City, and then Mr. Shaw got in all of this litigation. He still then and always considered

he was acting for Mrs. Hepburn's assignees. It was her stock; he had given it to her in January, although he hadn't made actual delivery of it. When I saw he was getting into all this difficulty I talked to him then about settling it, whether it wouldn't be cheaper to go out and settle, and he finally agreed it would be probably the wisest thing to do. I said then, "Turn over the stock to me, as long as I am going to carry on negotiations." That is when he turned it over, but I don't think I ever said anything to Mr. Bressler or those people up there

10 about the ownership of the stock until I finally went there on June 2d. They probably always considered Mr. Shaw was the owner; it stood in his name on the books.

Ques. Well, was there anything said between you and Mr. Shaw at the time this stock was handed to you by him about the ownership of it?

Ans. Certainly not, except that he handed it to me as Mrs. Hepburn's stock; he had no interest in the stock.

Ques. How could he hand it to you as Mrs. Hepburn's stock if nothing was said?

20 Ans. I asked him to turn over the stock to me, that I was acting for Mrs. Hepburn in the matter.

Ques. Turn over the stock to you for what purpose? Stock may be turned over to a person for any number of different purposes.

Ans. In carrying out the agreement to get the stock for Mrs. Hepburn, that was all; there wasn't anything else.

Ques. But nothing was said as to the amount of the credit?

30 Ans. No; nothing was said as to the amount of the credit.

Ques. Are there any books or accounts anywhere that show the financial transaction between Mrs. Hepburn and her father?

Ans. Mr. Shaw's books show the delivery by Mrs. Hepburn of the 350 shares of the Pennsylvania Building

Company stock—no, show the delivery of some of them; I gave some of them to Mrs. Hepburn myself, and it does show the delivery by Mrs. Hepburn to Mr. Shaw of the 350 shares—the Pennsylvania Building stock—and \$10,000 P. M. & G. Co. bonds; Mr. Shaw's books show that.

Ques. Well, are there any books that show the amount of indebtedness from Mr. Shaw to Mrs. Hepburn, and how that indebtedness arose, in detail?

Ans. Yes, I think there are.

Mr. Stockwell: We have those books in court, your Honor. There is a bookkeeper here. 10

Ques. Do you know whether these books show any credit when this stock was turned over or agreed to be turned over to Mrs. Hepburn?

Ans. I took that up, I think, with my brother. I really don't now, Judge, what the entry is in that particular. Mr. Shaw's bookkeeper is here and can testify to that.

Ques. If such entries were made they were made in Mr. Shaw's books? 20

Ans. Yes.

Ques. Mrs. Hepburn has no accounts?

Ans. No, she doesn't keep any.

Ques. How did Mrs. Hepburn become possessed of this amount of securities, \$30,000?

Ans. Why, I gave her a portion of it; a portion of it was given by her father a number of years ago.

Ques. What portions?

Ans. The books will show that; I couldn't tell you. 30

Ques. Well, she came into the money by gift from her father to some extent?

Ans. Part of it was given by her father. I think I gave her \$5,000 of these P. M. & G. bonds and her father gave the same amount, I think.

Ques. Can you tell me approximately how much she received from her father by way of gift, and how long ago?

Ans. The books are here. I think they would be the best evidence of that.

Ques. Is it possible to say without?

Ans. I wouldn't want to say definitely without reference to the books.

Ques. But did she receive as much from her father as she returned to him later—some \$30,000, I think you said?

Ans. I don't believe she did; I am very sure she didn't.

10 Ques. It would seem that the relations between Mrs. Hepburn and her father were not strictly the relations of debtor and creditor, if he was giving her stocks and securities of different kinds and she was giving him stocks and securities. Have you any idea how long it was before January, 1915, that she made these advances to her father?

Ans. I think it was a year or more.

Ques. Was he in any pecuniary embarrassment at that time?

20 Ans. No, excepting at times; twelve or fifteen years ago, some matters would be delayed for five or six months and then occasionally they would be cleaned up; that thing has happened frequently in my relations with Mr. Shaw.

Ques. What I am trying to ascertain in my own mind is whether or not Mrs. Hepburn's transfer of securities to her father might not have been a gift as fully and as absolutely as the transfer of securities from Mr. Shaw originally to Mrs. Hepburn.

30 Ans. Absolutely not; there was no such idea, and the books will show it was a loan.

Ques. Isn't it a little unusual for a father to give money to his daughter in the amount of some—we will say \$30,000, and subsequently, when the father would like to have some money for his own use, for the daughter to loan instead of giving an equal amount to him?

Ans. Why, I don't think Mr. Shaw would have asked Mrs. Hepburn to give it back to him. It was distinctly a loan. It was so entered on the books and was always considered between them. He thought it was only a very temporary advance, just for a question of convenience for himself. When he asked her for it she didn't hesitate to advance it to him; I saw nothing unusual in that.

Ques. Then you did not consider that in January, when he was speaking of turning over this stock now in question to your wife, it was to be in any sense as a gift? 10

Ans. The United Water stock?

Ques. Yes.

Ans. Oh, no, not as a gift; it was returned by him on account of the advances she had made to him.

Ques. There was no definite amount agreed upon and you did not know what the amount of those advances were?

Ans. Well, I knew that there were about 350 shares —I didn't say I didn't know what these advances were; I said there was 350 shares of Pennsylvania Building Company stock and \$10,000 Pennsylvania Granite Company bonds. 20

Ques. And did you know how long it had been?

Ans. I knew it had been a question of a year or more. I didn't know to the exact date what it was. I would have to refresh my mind from the books for that.

Ques. Can you give me any notion of how much you have given your wife and how much of this property that went to your father-in-law might have come from you? 30

Ans. I know I gave Mrs. Hepburn \$5,000 of these P. M. & G. Co. bonds, and I think it was—of the valuation of that stock of \$35,000 I think I gave her \$20,000 of it.

By Mr. Hepburn:

Ques. How many shares?

Ans. I don't know. I think it was about \$12,500, something like that, of the par, \$12,500. The 350 shares would be \$17,500 par value, and I think I gave her ten or twelve thousand.

By Mr. Connelly:

10 Ques. The Pennsylvania Marble Company bonds you say were worth par?

Ans. We considered they were worth par, yes.

Ques. And the Building Company stock par was how much—a hundred?

Ans. Par was \$50 a share; that was worth a hundred dollars a share.

Ques. You say you thought it was worth a hundred?

Ans. Yes.

20 Ques. And you knew that no interest had been paid on these Marble Company bonds since 1913?

Ans. I did.

Ques. You did?

Ans. Yes. There has been about \$1,400,000 put in that property, though, to my knowledge, and I believe it will certainly realize the bonds.

Ques. And you knew that the Pennsylvania Building stock was selling for par?

Ans. No, I did not.

Ques. Fifty?

30 Ans. No, I didn't know it was selling for par at that time.

Ques. Didn't you know of a sale made by Mr. Shaw to the Wilson estate at fifty?

Ans. I did not; no such sale was ever made.

By the Vice Chancellor:

Ques. Was there no implied understanding or suggestion of any kind that in case these negotiations did not

go through that you would return the stock to your father-in-law?

Ans. Never a sign of that sort, never an indication of that at all. It was Mrs. Hepburn's for what it was worth.

Ques. Was the understanding distinct that the stock would not be returned to him in any event?

Ans. Absolutely, it was a positive arrangement between Mr. Shaw and Mrs. Hepburn. There was no question about the return of it at all; that matter was never discussed.

Ques. He was to get no future benefits out of it excepting the credit, which would be more or less according to what you would get out of it? 10

Ans. Even that was not definitely arranged. I have always thought that would be the way to treat it. That was never said, I don't think, in so many words.

Ques. What was said? Can you picture before me in some way just what transpired between you and your father-in-law?

Ans. There were a half dozen discussions, frequent discussions between Mr. Shaw and myself about business matters, and, as I say, this question came up about Mrs. Hepburn's advances to him, and "When am I going to get that stock back?"—maybe that had been mentioned but she wasn't pushing him for it. He said, "Well, I have got some of that United Water stock, suppose I give that to you on account of your advances?" There was no objection made on her part, and he finally said "Well, I will give you that stock; I had better turn it over to you." I handled her affairs and looked after them for her and she wasn't consulted in it afterwards, and they got into this litigation, and, just as I said before—I can't make it any more definite—when I went up there I said "I think I ought to have this stock, because I will probably have to make an agreement of sale and delivery." 20 30

Ques. Can you remember whether in May he determined that he would turn the stock over to you by simply

coming in the office and handing you the stock and saying "Here is this stock I promised you," or was there some prior negotiations perhaps a day or two in advance?

10 Ans. There was, a day or two in advance, and I said to him "You had better bring that stock down and turn it over to me," when we finally agreed that I should go up there and see what I could do toward a settlement. When my brother, C. J., was taken sick that sort of brought the matter to a head. He had been handling the legal affairs, legal end of it, with Judge Starr over here and the people in Harrisburg; then the thing fell on me, when he was taken sick. Then I brought up the question of settlement. I said "Well, I will go there and do what I can. The next time you come down you had better bring that stock down, bring it with you." And he did it, brought it down and said "Here is the stock."

Ques. Don't you think that leaves it very definite as to what purpose it was to be left with you for?

20 Ans. Why, it was on account of Mrs. Hepburn's stock; that is the only reason why he would leave it with me. He did say—I said "It is Jane's stock and I think I ought to have it if I am going to go up there to make any settlement acting for her." He had been acting for her before and I wasn't in it and therefore I didn't suggest it.

Ques. There was no suggestion made by him to get it out of his name on account of his financial difficulty?

30 Ans. Not the least in the world, but he was acting for me until Mr. McCormick said he didn't want him to be a party with any agreement; there ought to be a separate agreement with Mrs. Hepburn. I had already said to the people up in Tower City that it was her stock.

Ques. At that time did you have any idea that he was pecuniarily embarrassed to an extent that might be disastrous to him?

Ans. I did not. I still think that Mr. Shaw can settle his accounts.

By Mr. Connelly:

Ques. Don't you know that until this litigation was started Mr. Shaw retained control of that stock?

Ans. Until this litigation was started?

Ques. Yes.

Ans. I certainly do not.

Ques. Until the time of the settlement under the agreements, didn't Mr. Shaw have control of that stock?

Ans. He did not. I had control of it.

Ques. For whom?

10

Ans. Beg pardon?

Ques. Did you have control of it for Mr. Shaw?

Ans. No, indeed; for Mrs. Hepburn.

Ques. Did Mrs. Hepburn ever exercise any control over it?

Ans. Only inasmuch as I did for her.

Ques. Who signed waivers of notice of meetings after May, 1915?

Ans. Why, I think Mr. Shaw did. The stock stood in his name; it had to be signed by him.

20

Ques. When did you first say to Mr. Bressler or his associates that Mrs. Hepburn owned this stock?

Ans. The first night I went to Tower City, I think; it was, I think, June 2d, I told them that I was acting for Mrs. Hepburn, that she was the owner of the stock; I was acting for Mr. Shaw on his suits, and for the General Utility Company on the sale of the electric property.

Ques. And the first reference made by Mr. Shaw—the first statement made by Mr. Shaw that Mrs. Hepburn owned this stock or was to have it was in January, 1915?

30

Ans. Yes.

Ques. Is that correct?

Ans. Yes.

Ques. And you said, did you not, that the litigation that was instituted by Mr. Shaw in connection with these matters was for Mrs. Hepburn's benefit?

Ans. In as far as the ownership of the stock went, but Mr. Shaw's note of \$10,000—he was interested in that end of it; the whole thing was interwoven with a lot of cross litigation; he was also interested in some expense for the condemnation by the Water Commission of Pennsylvania of some of the land that had been condemned up there, eleven or twelve hundred dollars.

10 Mr. Stockwell: We ask counsel whether they will admit the service of the demand for the transfer of this stock as served by the complainant upon the Water Company and as set forth in the bill of complaint?

Mr. Starr: So far as the Water Company is concerned we admit in the answer that those demands were made.

20 Mr. Connelly: So far as the Pennsylvania Company is concerned, we have no knowledge but we have no doubt it happened if Judge Starr says it happened. We are without knowledge, but we will accept your statement.

Mr. Stockwell: We understand, then, that it is admitted?

Mr. Connelly: Yes.

30 GEORGE PARKMAN, a witness produced on behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Stockwell:

Ques. Where do you live, Mr. Parkman?

Ans. Philadelphia.

Ques. What is your business?

Ans. Why, I was secretary to Mr. Shaw and a number of other things, other businesses, cigarette business.

Ques. Did you take care of the books for Mr. Shaw?

Ans. Yes, sir.

Ques. For how long a time and beginning when?

Ans. Why, about 1901, up to April, 1915.

Ques. You had nothing to do with his books after that?

Ans. No, nothing at all.

Ques. Have you his books here covering that period?

Ans. Yes; there they are. (Indicating.) 10

Ques. Won't you refer to these books of Mr. Shaw—witness is shown two journals, two ledgers, and is asked if they are the books of P. B. Shaw as kept by the witness?

Ans. Yes, sir.

Ques. Will you refer to these books and tell us whether there are any entries showing the transfer of securities by P. B. Shaw to the complainant, Jane Shaw Hepburn, and, if so, when?

Ans. Yes. 20

Ques. Give us the first entry. State the book from which you are reading, and page.

Ans. It is a journal, folio 273, debit profit and loss, credit stocks and bonds. Christmas present to Louise Shaw, Jane Shaw Hepburn and W. W. Hepburn of 100 shares each, common, Pennsylvania Building Company stock, given to them December 25th, 1906, but to stand in the name of P. B. Shaw on the books of the company.

By the Vice Chancellor: 30

Ques. 1906, did you say?

Ans. 1906, sir.

Ques. That was what stock?

Ans. Pennsylvania Building Company, common.

Ques. How much?

Ans. 100 shares each.

Ques. To each of those people?

Ans. Each of those three people.

Ques. That is, one to Mr. Hepburn, one to Mrs. Hepburn, 100 each, and—

Ans. Yes, and one to Louise Hepburn, another daughter.

By Mr. Stockwell:

10 Ques. Louise Hepburn?

Ans. Louise Shaw.

Ques. Is that another daughter of Mr. Shaw?

Ans. Yes.

By the Vice Chancellor:

Ques. Do you happen to know anything about that stock,—what it was worth at that time?

20 Ans. Well, we always figured it was worth a hundred dollars a share.

By Mr. Stockwell:

Ques. Give us the next entry?

By Mr. Connelly:

Ques. What is the date of the entry? That does not appear.

30 Ans. The date of the entry is the year 1907.

By Mr. Stockwell:

Ques. Inasmuch as that question has been asked, just explain how the books were kept?

Ans. Mr. Shaw was a private individual, and, of course, his books were not kept the same way as corporations. Transactions would take place and I would not know

anything about them until perhaps three or four months afterwards, so that the entries were made as they were reported to me.

By the Vice Chancellor:

Ques. But they were faithfully made by you as directed by Mr. Shaw?

Ans. Yes, sir.

By Mr. Stockwell:

10

Ques. And this was actually made in 1907?

Ans. 1907.

Ques. And stated as of December?

Ans. Stated as of December 25th, 1906.

By Mr. Connelly:

Ques. What time in 1907? Can you fix it?

Ans. Why, I presume the latter end of the year, because when I would be making up Mr. Shaw's accounts, be checking over the certificates, stock certificates, then I would find that there were 300 shares, perhaps, missing, and I would say to him "Where are those 300 shares?"

20

By Mr. Stockwell:

Ques. Do entries for the following year, 1908, appear in this book?

Ans. Yes, sir.

30

Ques. Do they follow immediately after the 1907 entries?

Ans. Yes, sir.

Ques. Do the 1909 entries follow those?

Ans. Yes, sir.

Ques. Well, do you know without looking?

Ans. Yes, I know without looking.

Ques. Well, do they?

Ans. Yes.

Ques. The years follow in proper order, do they?

Ans. Yes, sir.

Ques. Through the book?

Ans. Yes, sir.

Ques. Is there any cross entry of the entry you just read into a ledger?

Ans. Yes, sir.

10 Ques. Refer to the ledger entry.

Ans. (Witness complies).

Ques. From what account are you reading?

Ans. Profit and loss.

Ques. In what book?

Ans. Ledger.

By the Vice Chancellor:

20 Ques. What account did you say?

Ans. Profit and loss.

By Mr. Stockwell:

Ques. For the year 1907?

Ans. 1907, folio 273, \$30,000.

Ques. Is folio 273 the entry which you first read?

Ans. Yes, sir.

Ques. What is the next entry in your journal?

30 Ans. Folio 396 —

By the Vice Chancellor:

Ques. Did you have anywhere a stock account showing what stocks he had and to which would be posted this transfer to show the reduction in amount? Does this show that at this time \$30,000 left his possession?

Ans. \$30,000 shares common, Pennsylvania Building Company, folio 273, \$30,000.

Ques. That entry indicating that he had disposed of that much stock at that time?

Ans. Taken out of his stock account.

By Mr. Stockwell:

Ques. Did you have actual knowledge of the disposal of the stock at that time?

Ans. Yes, because the entries will show. 10

Ques. No, but did you know that he had given the stock to Mrs. Hepburn?

Ans. Yes, sir.

Ques. Of your own knowledge?

Ans. Absolutely.

Ques. At the time when that stock was given what was the approximate income of Mr. Shaw?

Ans. Between fifty and sixty thousand.

Ques. For what period?

Ans. For the year. 20

The Vice Chancellor: Net income, you mean?

Ques. For a single year?

Ans. No, that was the dividends and the interest on the bonds; it amounted to between fifty and sixty thousand a year.

Ques. That he was receiving at that time?

Ans. Yes, sir. 30

Ques. What is your next journal entry?

Ans. This is from the journal, debit profit and loss—

Ques. Page 396?

Ans. Folio 396, debit profit and loss and credit stocks and bonds, to stock given as Christmas present, Jane Shaw Hepburn, Louise Shaw Hepburn, W. W. Hepburn and D. M. Hepburn, 100 shares Susquehanna Iron Company each.

By the Vice Chancellor:

Ques. Do you know what that stock was worth? That was Christmas of what year?

Ans. That was in 1908.

Ques. And you did not answer what it was worth. Do you know?

Ans. Carried at par, \$100 a share.

By Mr. Stockwell:

10 Ques. Does that entry show the value of the stock?

Ans. \$40,000.

Ques. And that is shown also in the journal?

Ans. Journal and the ledger.

By the Vice Chancellor:

Ques. \$40,000, did you say?

Ans. \$40,000; yes, sir.

Ques. Instead of \$30,000?

20 Ans. Well, this is four persons. Louise Shaw was married to D. M. Hepburn, and Mr. Shaw gave them each, making four of them, 100 shares each.

Ques. Oh, I did not understand there were four of them.

By Mr. Stockwell:

Ques. What is the next entry?

30 Ans. Journal, folio 536, debit stocks and bonds, credit vault, to \$20,000 bonds Pennsylvania Marble & Granite Company given as Christmas present to Jane Shaw Hepburn, Louise Shaw Hepburn, W. W. Hepburn and D. M. Hepburn, \$5,000 each.

By the Vice Chancellor:

Ques. You did not give the date of it?

Ans. December 25th, 1909.

By Mr. Stockwell:

Ques. What is the next entry?

Ans. Journal 446—

Ques. For what year?

Ans. April 5th, 1913, debit A. P. Perley collateral account, credit Mrs. W. W. Hepburn and vault—debit A. P. Perley collateral account, \$494,000, credit Mrs. W. W. Hepburn, \$10,000, vault, \$484,000, to \$10,000 bonds Pennsylvania Marble & Granite Company borrowed from Mrs. W. W. Hepburn and deposited with A. P. Perley as collateral to a \$15,000 note dated April 13th, 1913, \$10,000, \$9,000 bonds Pennsylvania Marble & Granite Company from vault and deposited with A. P. Perley for same note, \$9,000; to 9,500 shares, common, Pennsylvania Marble & Granite Company stock, deposited with A. P. Perley as general collateral, par value, \$475,000. 10

By the Vice Chancellor:

20

Ques. Well, translated that entry means what, so far as Mrs. Hepburn is concerned?

Ans. He borrowed \$10,000 Pennsylvania Marble & Granite Company bonds from her.

Ques. How much?

Ans. \$10,000, par value.

Ques. Was that the same that was transferred to her in 1908?

Ans. 1907.

Ques. 1907?

30

Ans. Yes. There was only \$5,000 that was given to her at that time.

By Mr. Connelly:

Ques. \$5,000 given to Mrs. W. W. Hepburn?

Ans. Yes; he gave her \$5,000.

By the Vice Chancellor:

Ques. But at this time, in 1913, he borrowed from her, according to that entry, April 5th, 1913, \$10,000 of the Granite bonds?

Ans. Yes, sir.

By Mr. Hepburn:

Ques. Of those he had given her only \$5,000?

10 Ans. Only \$5,000.

By Mr. Stockwell:

Ques. Is there a cross entry in the ledger of that journal entry?

Ans. Yes; debited to A. P. Perley collateral account.

Ques. Read what is shown in your ledger.

20 Ans. 1913, April 5th, debited to A. P. Perley collateral account 19 bonds, Pennsylvania Marble & Granite Company, folio 446, \$19,000; April 5th, 1913, 9,500 shares, common, Pennsylvania Marble & Granite Company, folio 446, \$475,000.

By the Vice Chancellor:

Ques. Let me see the ledger entry where you credit Mrs. Hepburn with these bonds or this stock.

(Witness exhibits books.)

30

Ques. The entry reads, under the account of Mrs. W. W. Hepburn—that is Jane Shaw Hepburn, I suppose?

Ans. Yes, sir.

Ques. 1913, April 5th, 10 bonds, Pennsylvania M. & G. Co., folio 446, \$10,000. That is the first entry under her account?

Ans. Yes.

By Mr. Stockwell:

Ques. Go ahead.

Ans. Journal, folio 454—

Ques. This is another entry?

Ans. Another—debit vault, \$35,000, credit Mrs. Jane Shaw Hepburn \$35,000, to 350 shares, common, Pennsylvania Building Company stock, borrowed from Mrs. Jane Shaw Hepburn, April 7th, 1913.

Ques. Give us the date of that?

Ans. April 7th, 1913. 10

Ques. I know, but when was it entered in the journal?

Ans. On or about that time.

Ques. In the year 1913?

Ans. 1913; yes.

By the Vice Chancellor:

Ques. And that is the second item there which is credited to Mrs. Hepburn's account in the ledger, \$35,000, is it? 20

Ans. Yes, sir.

Ques. So your ledger now stands with her credited with \$45,000?

Ans. Yes, sir.

By Mr. Stockwell:

Ques. Were these entries made by you in the regular course of business in taking care of the books for Mr. Shaw and under his instructions? 30

Ans. Yes, sir.

Ques. Did you have actual knowledge of the receipt by Mr. Shaw of the securities mentioned in this credit entry in Mrs. W. W. Hepburn's account, aggregating \$45,000?

Ans. Yes, sir.

Ques. Do you know those were actually received by Mr. Shaw?

Ans. Yes, sir; absolutely.

Ques. Did they pass through your hands?

Ans. Yes, sir.

By the Vice Chancellor:

Ques. Were you in the employ of Mr. Shaw as his bookkeeper in May, 1915?

10 Ans. No, Judge.

Ques. You said you left when—in March?

Ans. I left about April 1st.

Ques. April, 1915?

Ans. Yes, sir.

By Mr. Stockwell:

Ques. What happened to his books when you left—do you know?

20 Ans. Nothing at all; there hasn't been an entry made since I made the last entry in them.

Ques. Just show us in the journal?

Ans. The last entry is made in 1914, December 31st, 1914.

Ques. Is that in your handwriting?

Ans. Yes, my handwriting.

Ques. At the time of the transfer by Mr. Shaw to Mrs. Hepburn of these securities was he possessed of a substantial income?

30 Ans. I didn't catch that.

Ques. At the time Mr. Shaw gave to Mrs. Hepburn these securities which you have been speaking about was he possessed of a substantial income?

Ans. Yes, sir.

Ques. Well, did it approximate the sum you have already mentioned, or more or less?

Ans. Just about the same, averaged each year about the same.

Ques. That is true for all of those securities, at the times they were all given, is it?

Ans. Yes.

Cross-examination.

By Mr. Connelly:

Ques. You say his gross income was fifty or sixty thousand a year?

Ans. Yes, sir.

Ques. What was his net income?

10

Ans. Twelve to eighteen thousand dollars?

Ques. And that maintained until you left his employ, April, 1915?

Ans. Oh, no.

Ques. What is the situation? How is it changed?

Ans. Why, about April, 1913, some of these securities didn't pay any dividends at all.

Ques. Well, then, beginning in 1906—I think you said the first entry was 1906?

Ans. Yes.

20

Ques. And going down to 1913, his gross income was fifty to sixty thousand a year, and his net income from twelve to eighteen thousand; that is correct. Now then, what about the year 1913? What was his gross income and his net?

Ans. That would have to be figured out from the books; I am not absolutely sure.

Ques. But you are sure that up to that time he had an income of fifty to sixty thousand?

Ans. Yes, sir.

30

Ques. And yet haven't the slightest idea now what his income was in 1913?

Ans. Not accurately.

Ques. Well, fifty to sixty thousand is not accurately.

By Mr. Stockwell:

Ques. Can you approximate it?

Ans. I should say twenty-five to thirty.

By Mr. Connelly:

Ques. Twenty-five to thirty thousand dollars in the year 1913—that is gross?

Ans. Yes.

Ques. And how much net?

Ans. None at all.

Ques. No net income whatever in 1913?

Ans. No.

10 Ques. How about 1914? How much gross income in 1914?

Ans. About ten thousand dollars.

Ques. And how much net?

Ans. None at all.

Ques. How much gross income up to April 1st, 1915, when you left his employ?

Ans. Practically none.

Ques. No gross income whatever during that period?

Ans. No.

20 Ques. No income during the first four months?

Ans. No.

Ques. First three months of 1915?

Ans. Well, very, very small amount.

Ques. How much?

Ans. Twenty-five hundred.

Ques. And during that period of time what were his expenses?

Ans. Well, Mr. Shaw didn't have any expenses.

Ques. What were his expenses? He had expenses on other years, didn't he?

30 Ans. Well, I am counting that as the interest of the loans.

Ques. For the first three months of 1915 you say he had a gross income of \$2,500?

Ans. Yes.

Ques. What were his expenses for the first three months of 1915?

Ans. I don't know.

- Ques. You haven't any idea?
 Ans. No.
 Ques. They might be ten thousand and you wouldn't know it?
 Ans. Yes.
 Ques. And they might be a hundred thousand dollars and you wouldn't know it?
 Ans. Yes, sir.
 Ques. And you are the bookkeeper?
 Ans. Yes. 10
 Ques. Taking care of the books?
 Ans. Yes.
 Ques. When did you say the last entry was in those books?
 Ans. December, 1914.
 Ques. So that for January, February and March, 1914, you made no entries in the books?
 Ans. January, February and March, 1914?
 Ques. 1915.
 Ans. No, made no entries at all. 20
 Ques. Was no bookkeeping carried on by Mr. Shaw during January, February and March, 1915?
 Ans. No, sir.
 Ques. Did he keep a check book?
 Ans. Might have drawn about two checks.
 Ques. Two checks during the first three months of 1915?
 Ans. Yes, sir.
 Ques. What account was kept of his income during the first three months of 1915? 30
 Ans. None at all.
 Ques. Do you know what he did with his income during that time?
 Ans. He didn't get it.
 Ques. But you have just told me his gross income was \$2,500?

Ans. That was from the securities, the interest of the bonds, but the banks got that, to be applied on account of the interest on the loans.

Ques. So that during the first three months of 1915 Mr. Shaw received practically no money whatever,—is that correct?

Ans. None at all.

Ques. And that condition continued until you left his employ?

Ans. Yes, sir.

10 Ques. Refer to the journal entry, 396, relating to the 100 shares transaction of Susquehanna Iron Company in 1908.

Ans. (Witness complies).

Ques. You have the 1908 Christmas present there?

Ans. Yes, sir.

Ques. And when was that entry made in the books?

Ans. I should say about December 31st.

Ques. 1908?

Ans. Yes, sir.

20 Ques. How did it happen that that particular one was made promptly, whereas the other entry was not made until months after the 100 shares of common stock of Pennsylvania Building Company had been given to Mrs. Hepburn and Mr. Hepburn?

Ans. Well, I can only explain that it wasn't reported to me.

Ques. What about the 1909 entry, December 25th, 1909?

30 Ans. That was made about the end of December.

Ques. 1909?

Ans. Yes.

Ques. And the 1913 one, April 5th, 1913, was made at what time?

Ans. On or about that date.

Ques. Will you kindly turn to your stock account?

Ans. (Witness complies).

Ques. Where is the stock account?

Ans. (Witness indicates on book).

Ques. Does that account show Mr. Shaw the owner at any time of stock of the United Water, Gas & Electric Company?

Ans. A transfer here on January 1st, 1909, shows 925 shares United Water, Gas & Electric Company stock as his stock.

Ques. Now what happened to that stock? What are the later entries which relate to that?

Ans. None at all.

10

Ques. What is the last entry in that account?

Ans. February 1st, 1912.

Ques. Was there not another account further over?

Ans. That is just the vault account.

Ques. So that so far as this book shows Mr. Shaw became the owner in 1909 of over 900 shares of United Water Company stock and is still the owner?

Ans. Yes.

Ques. How were these entries made by you,—after verbal instructions from Mr. Shaw or written memorandum handed to you?

20

Ans. Verbal instructions usually.

Ques. And made not at the time but months afterwards in many instances?

Ans. Well, as soon as he told me.

Ques. But it might be months afterwards before he would tell you?

Ans. Oh, yes.

Mr. Connelly: I think I object to any entries in the books. They are not made in the regular course of business; they are not books of original entry.

30

The Vice Chancellor: I think they are competent. I take it to be the regular course of an irregular business.

Ques. Have you any account with the United Water, Gas & Electric Company?

Ans. (Witness indicates in ledger).

Ques. Does that in any way show stock transactions?

Ans. No.

Ques. Does that stock account to which you refer show the transfer in 1910 of 570 shares of stock of the United Water, Gas & Electric Company?

Ans. No, sir.

10 JANE SHAW HEPBURN, the complainant, being duly sworn according to law, on her oath says—

By Mr. Stockwell:

Ques. You are the complainant in this suit, Mrs. Hepburn?

Ans. Yes.

Ques. And the wife of W. W. Hepburn?

Ans. Yes.

20 Ques. And a daughter of Mr. P. B. Shaw?

Ans. Yes.

Ques. Did you receive from your father certain shares of stock of the Pennsylvania Building Company and certain shares of stock of the Susquehanna Iron Company and certain bonds of the Pennsylvania Marble & Granite Company, and also certain other bonds at a later time of this same Pennsylvania Marble & Granite Company?

Ans. I did.

30 Ques. Do you recall when you received the first lot of these securities; what year?

Ans. I don't, but I have heard the books read and I suppose that is correct. I don't know the dates exactly, except at Christmas times.

Ques. According to the books, you received in 1906, December 25th, 100 shares of the Pennsylvania Building Company common stock?

Ans. Yes.

Ques. Did you receive that?

Ans. Yes.

Ques. Where did you put it?

Ans. In my box, my vault box.

Ques. Your own box?

Ans. My own box.

Ques. And was it kept there?

Ans. It has always been there until I—

Ques. And according to the books, you received 100 shares of the Susquehanna Iron Company. Do you recall the receipt of that? 10

Ans. Yes.

Ques. Where was that put?

Ans. In my box.

Ques. And according to the books you received \$5,000 par value bonds of the Pennsylvania Marble & Granite Company as a Christmas present in 1907?

Ans. Yes.

Ques. Did you receive those bonds?

Ans. Yes. 20

Ques. Where did you put those?

Ans. In my box.

Ques. The books also show that you received \$10,000 par value of bonds of the Pennsylvania Marble & Granite Company in April, 1913?

Ans. Yes.

Ques. Did you receive those?

Ans. Yes.

Ques. I have made a mistake in the question.

The Vice Chancellor: Well, what does it amount to, any way, Mr. Stockwell? 30

Mr. Stockwell: That is my blunder.

The Vice Chancellor: Why, certainly, but what does it amount to—submitting questions in that form when the witness is automatically following you and assenting to whatever you suggest?

Mr. Stockwell: I don't want her to automatically follow me.

The Vice Chancellor: The witness relies on your statements necessarily. Why do you ask questions in that form? You know your witness relies on your statements, and if you do not state them accurately you will mislead your witness and she will assent; that is the case always. If your client did not assent to your statements there would be a lack of confidence between you. Ask her for the testimony; don't tell her.

Ques. Well, Mrs. Hepburn, won't you tell in your own language about the receipt of any securities from your father and what you did with those securities?

Ans. Well, at different times since I have been married—I was married in 1895—my father has given me gifts, and at Christmas times he has given me gifts of bonds and stocks, and also my husband. I have a box in the Commercial Trust Company where I keep them; when they give them to me I put them there, and when they ask me for them for any particular reason, I have perfect confidence in both of them, knowing they are looking after the business of which I understand nothing—if they ask me to turn over certain securities I turn them over, and they usually tell me that they want to make a stock transfer, that there has been a reorganization, or there has been this or there has been that; just as to the dates—I never pay particular attention; I hand them over. And as to the special arrangement: I think it was in the spring—I don't know, I couldn't tell you the date—my father asked me for my Pennsylvania Building stock. He had given me 100 shares; my husband had given me 250 shares. I turned over the 350 shares to my father; also, at the same time, \$10,000 of the P. M. & G. bonds; and he agreed that he would return those to me very shortly; he just wanted me to lend them to

him for a short time for some business arrangement that he thought was necessary. I gave them to him, and he said "Well, I will return this to you very shortly." Well, a year went by and—my husband said it is a year, and my recollection is that it is two years before the first of January came around. The stock had been paying me eight per cent. and it had been—missed its dividends, and I began to inquire, and my father said to me, "I will give you this United Water stock, it is perfectly good, in part payment for the 350 shares,"—250 of which my husband had given me and 100 of which he had given me—"in part payment." 10

By the Vice Chancellor:

Ques. Did he say why he would not pay you in full?

Ans. He said he was not able to return me the 350 shares at that time, which he had promised to do, or he hadn't promised, he had just said to me "Well, I will return this to you very shortly," and I had been dealing that way all the time; if I had ten thousand of anything 20 and they want it for any purpose I have given it to them, and I pay no more attention to it; I expect them to look out for my interest the same as if it was their own.

By Mr. Stockwell:

Ques. Did you receive the dividends on these securities which were given to you by your father?

Ans. Yes. 30

Ques. On all occasions?

Ans. I think every year until they didn't pay.

Ques. I want to find out—

Ans. I don't just remember the date.

Ques. Tell us what you know about the transfer to you of the shares of the United Water, Gas and Electric Company?

Ans. Well, my father told me—it was after the first of the year; I couldn't tell you the date—he told me that he would give me this United Water and Gas stock, and my husband was there, and he understood that that was mine, and I understood that it was mine. I knew they were having some negotiations and I expected my husband to look after it and I didn't pay any more attention to it.

Cross-examination.

10

By. Mr. Connelly:

Ques. How far was Mr. Shaw's control over this United stock?

Ans. I didn't think he had any control after he gave it to me.

Ques. Did you not hear Mr. Hepburn, your husband, testify that Mr. Shaw was to retain control of that stock?

20

Ans. I don't think so. Whenever my father has given me anything he has given it to me outright.

Ques. Was it not so that Mr. Hepburn, your husband, was—or Mr. Shaw, was to retain control of this stock so that Mr. Hepburn in the negotiations could get for him the best possible price?

Ans. That wasn't my understanding; my understanding was that my husband was after it for me.

Ques. Did you ever yourself exercise any control over this stock from January, 1915?

30

Ans. I never paid any attention to the business meetings or anything in any of the corporations. I hold securities and expect my husband to do that; he has always done it.

Ques. And you didn't receive notices of meetings?

Ans. I have often received notices of meetings.

Ques. Affecting this company?

Ans. No.

Ques. In January, 1915, you didn't yourself get the stock certificates?

Ans. No, Mr. Hepburn got them for me.

Ques. When did he get them?

Ans. I couldn't tell you the date exactly.

Ques. Did he say anything to you about them when he had gotten them?

Ans. Yes, he talked to me. I said to him several times "I think it would be wise for you to get those securities," and he said "Well, I will." That is all there was of it.

10

Ques. Did he ever give them to you?

Ans. No.

Ques. And you didn't know that he got them?

Ans. Only what he told me.

Ques. When did he tell you that he had gotten them?

Ans. I couldn't tell you the date. Mr. Hepburn comes home and tells me a great many things and I don't pay attention. I couldn't tell you the date when he tells me a great many things.

20

Ques. You can't fix any time at all that Mr. Hepburn told you that he got this stock, and you never had the stock physically in your possession?

Ans. I knew that he had it when he said so, but I couldn't tell you the date that he told me. I never paid attention to dates like that.

Ques. Were you consulted about any corporate action being taken by the United Company at any time?

Ans. Yes, all the time. I have signed agreements between Mr. Bressler that have been sent to me or different members up there.

30

Ques. I am referring to the action of the United Company, corporate action, not relating to the sale of the stock.

Ans. I don't understand the question.

Ques. Did you ever sign any paper as a stockholder of the United Company?

Ans. I don't remember. I signed some papers, some contracts, but what you have reference to I don't know.

Ques. Did you ever sign a waiver of notice of the meeting of the United Company?

Ans. Not that I know.

Ques. There was some stock which your father had given to you on which dividends were paid—is that correct?

Ans. Yes, sir.

10 Ques. Do you know whether that is true of the stock which he gave you in 1906—the Pennsylvania Building Company stock? Has that paid dividends?

Ans. That paid dividends; at one time it paid eight per cent.

Ques. And you got that dividend check, did you?

Ans. Yes, sir.

Ques. From the company?

20 Ans. No. The stock all stood in my father's name, the Pennsylvania Building Company, and then he gave me the checks, and my sister, and all of us that were entitled to it.

Ques. Why did he keep it in his name? So that he could use it as collateral?

Ans. I really don't know.

Ques. Did you ever ask him why he kept it that way?

Ans. No.

Ques. The only conversation you had with your father with respect to this stock was in January, 1915—is that correct?

Ans. Yes.

30 Ques. As I understand, the dealings between you and your father, from time to time he would give you stocks or bonds and when he would ask you for them you would let him have them?

Ans. Well, he didn't ask me for them very frequently, but when he did ask me for them, the same way when my husband asked me for them, I would give them to him.

Ques. And whenever anything was required to be done, so far as these corporations and your interest in them was concerned, if any papers were to be signed they told you to sign them and you signed them—that is correct?

Ans. Yes; I didn't pay any attention to details in any of the corporations; I trusted my husband and my father to look after those matters for me.

Ques. Mrs. Hepburn, can you tell us the status of the account between yourself and your father at this time?

Ans. Well, I don't know that I could.

10

Ques. You don't know how much he owes you or you owe him?

Ans. No. I never keep accounts between my husband and my father. They do the best they can with me and they settle with me; whatever they give me why—if they take it, why, I am sure to get full returns.

Ques. That applies to all the dealings you have had with your father?

Ans. All of them.

20

Mr. Stockwell: I offer in evidence the original signed agreements of June 23d and July 9th, 1915, being already marked Exhibits C-3 and C-2.

Mr. Hepburn: Let me state it.

Mr. Stockwell: Yes; you are better acquainted with the facts than I am.

Mr. Hepburn: The Pennsylvania Company produces, upon demand of the complainant, duplicate originals of the agreements between Jane Shaw Hepburn and Pfeiffer, et al., dated June 23d, 1915, and P. B. Shaw and Pfeiffer, et al., dated July 9th, 1915, these being the original instruments, other duplicate originals of which were introduced in evidence by the complainant and marked C-2 and C-3, and the Pennsylvania Company admits that

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these duplicate originals now offered were deposited with them on September 8th, 1915, at the time of the creation of the trust fund of \$8,700 already referred to.

(Said papers marked Exhibits C-2 and C-3 respectively.)

Complainant rests.

10 At this point a recess was taken until 1.30 o'clock P. M.

Hearing of the cause resumed after recess, in the presence of the counsel for the respective parties heretofore noted.

HARPER T. BRESSLER, one of the defendants, being duly sworn according to law, on his oath says:

20 By Mr. Connelly:

Ques. Mr. Bressler, where do you reside?

Ans. At Tower City, Pennsylvania.

Ques. And you are individually one of the defendants in this suit, are you not?

Ans. Yes, sir.

Ques. And what connection did you have with the United Water, Gas & Electric Company, another de-
30 fendant?

Ans. I am its secretary.

Ques. For how long have you been secretary?

Ans. Since 1912.

Ques. And you have the minute book of the company, have you?

Ans. Yes, sir.

Ques. Are you a resident of Tower City?

Ans. Yes, sir.

Ques. Who is the president of the United Company?

Ans. B. W. Fees.

Ques. Is Mr. Fees here?

Ans. Yes, sir. Well, he will be here presently; he was here this morning.

Ques. Where does he reside?

Ans. At Tower City.

Ques. Under what State is the United Company incorporated—under the laws of what State?

Ans. New Jersey. 10

Ques. Has the company a branch office?

Ans. It has.

Ques. Where is it?

Ans. At Tower City.

Ques. Where does it conduct its business?

Ans. Well, the monthly meetings of the company are held at Tower City.

Ques. That is, you mean the monthly meetings of the directors? 20

Ans. Of the directors, yes, sir, and the stockholders meeting is held in Camden.

Ques. Well, where does the company actually transact its business?

Ans. Such business as it has at Tower City.

Ques. What is its business?

Ans. Principally now looking after the management of the Williams Valley Water Company.

Ques. What is its connection with the Williams Valley Water Company? 30

Ans. It owns all of the stock of the Williams Valley Water Company.

Ques. In what county is Tower City, Pennsylvania?

Ans. Schuylkill County.

Ques. How long have you maintained an office at Tower City?

Ans. Well, in connection with this company, since 1910 practically.

Ques. What property of the company is kept at Tower City in the office?

Ans. Well, its books and papers and seal.

Ques. What sort of books?

Ans. The minute book and the stock certificate book.

Ques. What about the physical property that belongs to the company?

Ans. The company has none as a company.

Ques. I thought I understood you to say that it held the stock—

10 Ans. Oh, it owns the stock of the Williams Valley Water Company; yes, sir.

Ques. Where are the certificates representing that ownership?

Ans. In the hands of the Pennsylvania Company for Insurance on Lives as trustee for a bond issue of the United Water, Gas & Electric Company.

Ques. Is there any other property of the company with the exception of the transfer book and the books which
20 you have said are kept at Tower City?

Ans. No, sir.

Ques. Where is the seal kept?

Ans. The seal—I mentioned the seal, I think,—the seal is at Tower City.

Ques. And the transfer book is kept where?

Ans. Well, the transfer book was only delivered to us or turned over to us in April of 1915; since that time it has been in my possession at Tower City. It was given to me in Camden in April of 1915.

30 Ques. Is there any property of the company anywhere except at the Tower City office, or kept anywhere except at the Tower City office?

Ans. Not that I have any knowledge of.

Ques. Have you the minute book?

Ans. Yes, sir.

Ques. Taking up the last meeting of stockholders of your company—what date was that?

Ans. The 2d of February, 1916.

Ques. Was P. B. Shaw present at that meeting?

Ans. No, sir.

Ques. Was he represented by proxy?

Ans. No, sir.

Ques. What about the meeting preceding that—was Mrs. Hepburn represented at that meeting?

Ans. No, sir.

Ques. What date did you say?

Ans. February 2d, 1916.

Ques. The meeting which preceded that was held 10 when?

Ans. The stockholders' meeting?

Ques. The stockholders' meeting.

Ans. On the 8th of April, 1915.

Ques. And where was that held?

Ans. At Camden.

Ques. Was Mr. Shaw present at that meeting?

Ans. He was.

Ques. Present in person?

20

Ans. Present in person.

Ques. And how many shares of stock stood in his name at that time?

Ans. 379 shares.

Ques. He was the holder of 379 shares?

Ans. Yes, sir.

Ques. Was that meeting held pursuant to a notice or a waiver signed by the stockholders?

Ans. It was held pursuant to a notice.

Ques. Sent to the stockholders?

30

Ans. Sent to the stockholders.

Ques. Was there another meeting of stockholders in 1915 after April?

Ans. There was one—of stockholders?

Ques. Yes.

Ans. No, sir.

Ques. Was Mr. Shaw a director of the company?

Ans. Yes, sir.

Ques. Was there a meeting of the directors of the company held after April, 1915?

Ans. Yes, sir.

Ques. What time?

Ans. On the 8th of September, 1915.

Ques. Where was that meeting held?

Ans. At Tower City.

Ques. And was Mr. Shaw present at that time?

Ans. Mr. Shaw was not present.

10 Ques. Was that meeting held pursuant to a call sent out by the secretary or a waiver of notice?

Ans. It was a waiver of notice signed by five of the directors, and also a paper showing Mr. Shaw's consent to the holding of the meeting at that time, which was filed at the same time.

Ques. Will you read the waiver signed by the five directors?

20 Ans. The following was filed after the reading of the call for the meeting: "We, the undersigned, being all the directors of the United Water, Gas and Electric Company, a corporation of the State of New Jersey, do hereby waive notice of the time, place and object of a meeting of the directors of the said company. We designate the 8th day of September, 1915, at 12.30 o'clock p. m., at the office of the company in Tower City, Pa., as the time and place of said meeting, the purpose of said meeting being for the transaction of such business as may come before it. (Signed) Lewis Starr, Harper T. Bressler, W. N. Snyder, John Pfeiffer, B. W. Fees."

30

Ques. And were they all the directors of the company at that time?

Ans. Except Mr. Shaw.

Ques. Will you read the paper signed by Mr. Shaw? Is that waiver dated? I don't recall.

Ans. I don't think so. My minutes do not show a date.

Ques. But it refers to the meeting by date?

Ans. Yes.

Ques. Now, will you read the paper signed by Mr. Shaw?

Ans. "I hereby consent to the holding of meeting of the United Water, Gas and Electric Company on September 8th, 1915, at 12.30 o'clock p. m. P. B. Shaw."

Ques. What was the occasion for Mr. Shaw signing such a paper?

Ans. Well, to comply with the by-law which requires notice to all of the directors of a special meeting. Notice had not been given, and the meeting of the United Company was necessary to complete the sale of the Sterling Electric Company to the Baltimore people. 10

Ques. How did you get that paper?

Ans. This? (indicating).

Ques. Yes; signed by Mr. Shaw.

Ans. Mr. Hepburn, I think, handed it to me.

Ques. Mr. W. W. Hepburn?

Ans. Mr. W. W. Hepburn.

Ques. And do you know when it was handed to you? 20

Ans. Well, that day.

Ques. That is, September 8th?

Ans. Yes, sir.

Ques. You know Mr. Shaw's signature, do you?

Ans. Yes, sir.

Ques. That is his signature?

Ans. Yes, sir; that is his signature.

By the Vice Chancellor:

Ques. And there stood in his name as record owner how many shares of stock that day? 30

Ans. 379 shares.

By Mr. Connelly:

Ques. Will you refer to your by-laws, please, showing particularly the section which relates to stock transfers?

Mr. Stockwell: Are you going to offer part of the by-laws? Is that all?

Mr. Connelly: You may offer them all. We are going to offer the part that refers to the stock transfers.

Mr. Stockwell: We ask that they all be put in.

10 Mr. Connelly: You may put them in, if you wish.

Ans. Do you want the entire article or section?

Ques. I want the article and section which relates to transfers of stock. Identify it by number, please.

20 Ans. "Certificates of Stock. Article 7. Section 1. All certificates shall be numbered in consecutive order and be bound in a book, and shall be issued under the corporate seal of the company, and shall be signed by the president and by the treasurer. Section 2. The stock shall be transferable only on the books of the company by the
30 owner of the stock in person, or by attorney duly constituted by written power of attorney. On surrender of the certificates of stock to be canceled and upon the cancellation of any certificate of stock it shall be pasted in the stock certificate book at the place from which it was issued and shall be stamped across its face with the words 'surrendered and canceled.' Section 3. The stock transfer book or books shall be closed twenty days before the election to be held by the stockholders, and shall remain closed until after such election."

Mr. Stockwell: If your Honor please, we object to reading a part of the by-laws unless they are going to offer the entire set in evidence.

The Vice Chancellor: Objection overruled. You may offer them if you want to.

Ques. There is no other reference to the transferring of stock?

Ans. No, sir.

Ques. In the by-laws?

Ans. No, sir.

Ques. Do you have anything to do with the transferring of the stock on the books of the company? You know what transfers are made, do you?

Ans. Well, I have had in my possession the certificate book since 1910-1911, so that I know—would know if there were any certificates issued.

10

Ques. In May, 1915, or June, 1915, was any request made that stock standing in the name of Mr. Shaw be transferred to any other person?

Ans. No, sir.

Ques. Down to July 9th, 1915, had any request been made?

Ans. No, sir.

Ques. Did you know of any one else as owner of the stock except Mr. Shaw during May, June and July, 1915?

20

Ans. Well, about the 23d or 24th of June Mrs. Hepburn's written agreement came to us, or the agreement signed by Mrs. Hepburn. Then we first knew of Mrs. Hepburn's claim to this stock.

Ques. That is the agreement under which she was to sell the stock to you six gentlemen?

Ans. Yes, sir.

Ques. Before that time or after did she exercise any control over that stock in any way?

Ans. Not that I know of.

30

Ques. Did she communicate with the company in any way respecting her ownership of the stock?

Ans. Not until the latter part of October, when Mr. C. J. Hepburn notified the company that she was the owner of the stock.

Ques. What year?

Ans. 1915.

Ques. That was after the attachment?

Ans. Yes, sir.

Ques. Referred to by the Pennsylvania Company?

Ans. Yes, sir.

Ques. Was your company, the United Company, served with notice of an attachment at the suit of the Pennsylvania Company against Shaw?

Ans. It was.

Ques. In Schuylkill County?

Ans. Yes.

10 Ques. And when?

Ans. Well, sometime after the 19th—

Mr. Hepburn: I object. The records will be the best evidence and will show that.

Ques. Have you a record with you which will show when that attachment was served?

Ans. I may have; I am not so sure about that.

20

Mr. Hepburn: We have the record, if you want it.

The Vice Chancellor: There is no dispute as to the date, is there?

Mr. Hepburn: We ask that the whole record go in instead of just part.

30 Ques. October 19th, 1915,—is that correct, to the best of your knowledge?

Ans. Well, to the best of my knowledge that was the time of the service, between the 19th and the 29th.

Mr. Connelly: Do you want the record offered in evidence?

Mr. Stockwell: Yes.

Mr. Connelly: I offer in evidence an exemplification of the record from Schuylkill County, Pennsylvania, number 340, November Term, 1915, Pennsylvania Company for Insurance on Lives & Granting Annuities against P. B. Shaw.

(Said record marked exhibit D-4).

Ques. When did you first have brought to you attention any claim by Mrs. Hepburn that she was in any way interested in this stock, and by whom? 10

Ans. Well, the agreement came to us signed by her.

Ques. And that was the agreement of June 23d, 1915?

Ans. Yes, sir.

Ques. Before that time did you know that any one was interested in that stock except P. B. Shaw, the record owner?

Ans. I did not.

Ques. You had not been told that Mrs. Hepburn was the owner of the stock? 20

Ans. No, sir.

Ques. And before this agreement of June 23d, 1915, was signed, and the later agreement of July 9th, 1915, had any agreement been submitted to you with respect to the sale of this stock of the United Company?

Ans. Yes, sir; there were two agreements prepared by Mr. Carroll Williams.

Ques. Have you the agreements with you; the draft of the agreement which was not executed?

Ans. Yes, sir. (Producing paper.) 30

Ques. Mr. Williams, you say, prepared that paper?

Ans. Yes, sir; Mr. Williams, Mr. Williams' office; Mr. Keim did the actual work on it.

Ques. For whom was he acting?

Ans. For the six people who owned the Sterling Electric Company at Tower City.

Ques. And that agreement was sent to you by Mr. Williams?

Ans. This agreement, I think, was handed to Mr. W. W. Hepburn and a copy of the other agreement was forwarded to us at Tower City. This agreement was prepared under my direction; I was in the office when it was finally completed and was sent to Mr. Hepburn—I think handed to him, probably mailed.

Ques. Wasn't that agreement the result of a conference which had theretofore been had between you and your associates and Mr. Shaw, or some one acting for him?

- 10 Ans. Not with Mr. Shaw. My associates and myself came to Philadelphia some time the latter part of May, had a conference with Mr. Seabrease, Mr. Lucas and Mr. W. W. Hepburn at Mr. Williams' office in Philadelphia, in regard to the sale of the Sterling Consolidated Electric Company and the other properties. Following that conference Mr. W. W. Hepburn, Mr. Williams and myself met at the office of C. J. Hepburn and prepared a rough draft of a proposed settlement of all the differences between Mr. Shaw and ourselves and the sale of these properties. I took the proposition home to my associates, and after some correspondence with Mr. Hepburn we arrived at a basis of settlement and sale.

20 Ques. The result of those conferences is embodied in that agreement?

Ans. In this agreement and the other for the sale of the Sterling Consolidated Electric Company.

- Ques. And this agreement provides that you shall become the purchaser of stock of the United Water, Gas & Electric Company, does it not?

30

Ans. Yes, sir.

Ques. How many shares?

Ans. 380 shares.

Ques. And whose stock was that, so far as you were led to believe during these negotiations?

Ans. P. B. Shaw's—

Mr. Stockwell: I object.

Ans. (Continuing) so far as we knew.

Mr. Stockwell: Go ahead.

The Vice Chancellor: I think it is competent.

Mr. Connelly: I offer in evidence this paper, which is unexecuted.

The Vice Chancellor: Is it signed?

10

Mr. Connelly: It is signed by W. W.—

Mr. Stockwell: I object to that. It is a paper prepared by the witness at that time; it was never signed, never made an agreement between the parties.

Mr. Connelly: It was signed by W. W. Hepburn, witnessed, and the signature "W. W. Hepburn" has been crossed out. I will prove by this witness the circumstances.

20

Ques. Why wasn't that agreement used?

Ans. Mr. W. W. Hepburn came to Tower City on the 17th of June prepared to sign the agreement with the General Utilities Company, the Baltimore people, for the sale of the Sterling Electric Company, to pay \$5,000 down on the agreement with them, and also to close up the arrangements with Mr. Shaw in regard to the settlement of the law suits, the sale of the United stock and the closing up of the entire matter. When he came to the office—a telephone call had come in for him, asking him to come to the telephone—Mr. Hepburn went to the telephone and answered the call. Of course, those sitting in the office only heard one side of the conversation, but after Mr. Hepburn had closed he turned to us and said, "That was Mr. Shaw at the other end. He objects to

30

signing the agreement, or his attorney objects to having him sign the agreement in the shape that it is at present."

By the Vice Chancellor:

Ques. In what?

10 Ans. "In the shape that it is at present." And he asked us whether it would matter to us if some one else agreed to deliver this stock instead of Mr. Shaw. We assented to that, and new agreements were prepared in two—that agreement was split in two parts, the stock to be delivered by one party and the other provisions to be carried out by the other.

Ques. Who made this statement at the 'phone?

Ans. Mr. Hepburn made the statement in the office.

Ques. Which Mr. Hepburn?

Ans. Mr. W. W. Hepburn.

By Mr. Hepburn:

20 Ques. What was the date of it, Mr. Bressler?
Ans. the 17th of June.

Mr. Connelly: I offer in evidence the unexecuted agreement.

The Vice Chancellor: It may be filed as part of the testimony of this witness as to what transpired.

30 Mr. Hepburn: We do not object to it.

Mr. Connelly: I want to get it identified by some number, that is all.

The Vice Chancellor: Very well.

(Said paper marked Exhibit D-5).

By Mr. Connelly:

Ques. The subsequent agreements of June 23rd, 1915, and July 9th, 1915, embody the provisions set out in this draft of the agreement?

Ans. Yes, sir.

Ques. With the exception that Mrs. Hepburn appears in the June agreement as the seller of the stock?

Ans. That is the only real difference.

Ques. How long had those negotiations been pending which resulted in the preparation of this agreement and the subsequent execution of the agreements of June 23rd and July 9th? 10

Ans. I think from about the 20th of May.

Ques. And those negotiations had been conducted with Mr. W. W. Hepburn?

Ans. W. W. Hepburn; yes, sir.

Ques. I show you letter dated May 13th, 1915, marked for identification for Pennsylvania Company D-1, and ask you if you received that letter about that time from Mr. Hepburn? 20

Ans. Yes, sir.

Ques. Will you kindly read that?

Ans. (Reading) "May 13, 1915. Mr. Harper T. Bressler, Tower City, Pa. Dear Sir:—Mr. Williams told me of the receipt of advice from you about the different propositions we had talked over. I find that Mr. Shaw has made the enclosed advances to the Williams Valley Company totaling \$6,192.51, and these are undoubtedly a proper obligation of the Williams Valley Company. If he is reimbursed for these and the purchase of his portion of the stock for \$7,500, instead of the \$10,000 which I suggested to you, and in lieu of the \$5,000 which you in turn suggested to me, or in other words splitting the difference between us, I believe we can get this matter settled. Of course, Mr. Shaw is very positive about his position and his ownership of the entire Water Company, and I am making 30

this without prejudices to his case, but if you will wire us to-morrow morning it might be possible for us to go to Williamstown to-morrow night to take it up with your directors. I will do everything I can to hurry forward matters. Very truly yours, W. W. Hepburn. P. S. The above amount does not include the advances made last summer for repairs and incidentals that were advanced by Mr. Shaw, amounting to a few hundred dollars."

10 Ques. I call your attention to a sentence in the letter: "Of course Mr. Shaw is very positive about his position and his ownership of the entire Water Company, and I am making this without prejudice to his case." Do you know to what water company he refers?

Ans. The Williams Valley Water Company.

Ques. Did he own the entire Williams Valley Water Company?

20 Ans. Well, the United Water, Gas and Electric Company owns the entire Williams Valley Water Company, and Mr. Shaw set up a claim in the New Jersey courts to being the owner of all the stock of the United Water, Gas & Electric Company, while we were in possession and claimed ownership of sixty per cent. of it.

Ques. Well, then, the water company that is referred to here is the United Company?

30 Ans. No; it is the Williams Valley Water Company. There was a dispute between Mr. Shaw and my associates and myself in regard to the ownership of the Williams Valley Water Company, and that is the company to which he refers.

Ques. All of the stock of the Williams Valley Water Company was owned by the United Company?

Ans. Yes, sir.

Ques. And in the proceedings at Harrisburg, and in the litigation in New Jersey, didn't Mr. Shaw claim to own all of the stock of the United Company?

Ans. Yes, sir.

Ques. And he was record owner of about forty per cent. ?

Ans. Yes, sir.

Ques. I show you letter dated May 21st, 1915, W. W. Hepburn to you, marked Exhibit for Identification, number 2, Pennsylvania Company, and ask you to read that.

Ans. (Reading.) "May 21, 1915. Mr. Harper T. Bressler, Tower City, Pa. Dear Sir: I have yours of the 20th inst., and note that you have been absent in Harrisburg on a continuation of the litigation. Of course, this will go on and probably get worse instead of better, and that is exactly what I am endeavoring to avoid. I did not mean to make my proposition in the light of a repayment to Shaw for moneys he has advanced to the company. It was only a question of getting at what was a fair price for his interest which you claim is a forty per cent. interest. As I understand it you have offered \$5,000 for this interest and you to pay all of the \$3,000 claim, all suits to be discontinued and you to sell to the Baltimore people for \$100,000 flat and retain all accounts receivable in lieu of Shaw's \$10,000 note. It seems to me that we are getting closer together and that the difference would soon be eaten up in the litigation already started. My proposition to you originally was about \$12,000 instead of the \$5,000 which you have offered. If you make that \$9,000 instead of \$5,000 I will undertake to close the matter and will come to Tower City for this purpose. As I called your attention to before, if this property is sold to the Baltimore people it will certainly greatly enhance the value of the Water Company and will, in fact, be of great benefit to all business interests in the Williams Valley, because it will bring new money into the district and they will certainly spend a great deal on this property. I think at the same time it would make it possible by one means or another for the traction property to be put in first-class shape. Therefore you can readily see where every one who is inter-

ested in the valley would be benefitted, as they always are when outside capital is furnished for the public service properties. The fear I have is that the Baltimore people will withdraw their proposition, as I know they are interested in two other properties which will be very quickly decided. If that is withdrawn then I see no means at hand for a solution except the carrying out of the litigation, which would be unfortunate for the parties directly interested as well as for the public who are indirectly interested in the improvements of these properties.

10 I have to go to Virginia on Sunday night, but I expect to be in my office again on Tuesday morning. If you will take this matter up with your people and advise me here by that time I will in turn arrange with the Baltimore people to await my return before withdrawing their proposition. Very truly yours, W. W. Hepburn."

Ques. What was the date of the hearing at Harrisburg, at which Mr. Shaw claimed to own all of the stock of the United Water Company?

20 Ans. 18th of May.

Mr. Hepburn: Oh, no; he didn't say that at the hearing in Harrisburg. It was a different proposition at Harrisburg.

Ques. In the litigation at Harrisburg, did Mr. Shaw claim to own all of the stock of the United Company?

Ans. He did, except possibly 30 shares.

30 Ques. And the date of the hearing at which he made that statement was May 18th, 1915?

Ans. May 18th, 1915.

Ques. I show you a letter dated June 21st, 1915, W. W. Hepburn to you, marked D-3 for identification, Pennsylvania Company, and ask you if you received that from Mr. Hepburn in the regular course of business?

Ans. Yes, sir.

Ques. Will you read it, please?

Ans. (Reading.) "June 21, 1915. Mr. Harper T. Bressler, Tower City, Pa. My Dear Sir: I have yours of the 18th inst. on my return to the office this morning, enclosing the certificate of change of corporate title, and I am very much obliged for your promptness. I took up with Mr. Shaw the questions his attorneys had raised in Williamsport on the contract which was prepared by Mr. Williams for his execution, and I will adjust them today with Mr. Williams and have new contracts executed. There is no change in the details, merely in the matter of executing them, and I will have these in your hands within the next few days. I had Mr. Shaw send the notice to the Harrisburg attorneys postponing the hearing for this week, as you requested. Very truly yours, W. W. Hepburn." 10

(Said letters marked Exhibits D-6, D-7 and D-8, respectively).

Ques. Have you the stock certificate book?

Ans. Yes, sir. 20

Ques. Will you let me know what stock certificates are standing in the name of P. B. Shaw, giving the number, date and number of shares of each certificate.

Ans. No. 32, 15 shares, dated February 12th, 1900; No. 36, 5 shares, same date; No. 37, 10 shares, the same date; No. 44, 100 shares, April 29th, 1910; No. 45, 100 shares, the same date; No. 46, 50 shares same date; No. 47, 50 shares, same date; No. 48, 49 shares, same date. That is all.

Ques. Did you receive from Mr. Roads, of Pottsville, the notice demanding a transfer of this stock? 30

Ans. I did.

Ques. And referring to a bill of sale executed by the sheriff of Schuylkill County?

Ans. Yes, sir.

Ques. Did you transfer the stock?

Ans. No, sir.

Ques. What was the date of the receipt of that notice? If you have the notice read that.

Ans. I have the notice, I think. No, I do not seem to have the notice. I thought I had it right with this file.

Mr. Connelly: I call on the other side for the notice sent by Mr. Roads.

10 Mr. Hepburn: We will admit that there was a demand for a transfer.

Ans. (Continuing) The 18th of December was the date of their demand, I learn from my answer.

Ques. At any rate, Mr. Bressler, there was a bill of sale presented to you by the Sheriff covering this stock?

Ans. Yes; Mr. Roads enclosed a bill of sale from the Sheriff.

Ques. That is, the Sheriff of Schuylkill County?

Ans. Sheriff of Schuylkill County.

20 Ques. That stock is still in Mr. Shaw's name on the books of the company?

Ans. On the books of the company.

Ques. A total of 379 shares?

Ans. Yes, sir.

Cross-examination.

By Mr. Stockwell:

30 Ques. Mr. Bressler, you have just stated that the stock still stands in the name of Mr. Shaw. That covers 30 shares which are held by the Williamsport Bank?

Ans. Well, I suppose so.

Ques. Well, don't you know that?

Ans. Well, that is a question in my mind. The bank claimed to own it; Mr. Shaw claimed to own it; Mr. Hepburn agreed to sell it to us, and there you are.

Ques. That is the 30 shares in the possession of the Williamsport Bank?

Ans. No, 20 shares.

Ques. And on those 20 shares Mr. Shaw has voted repeatedly.

Ans. He has.

Ques. And with the knowledge on the part of yourself and the United Water Company that the stock was actually held by the Williamsport Bank?

Ans. No, sir; no knowledge at all. We knew nothing of that until you presented the certificates to Mr. Starr for transfer and he sent them on to us; that was the first knowledge we had of anybody owning any stock except Mr. Shaw. 10

Ques. And when was that? What was the date of it?

Ans. Mr. Starr forwarded the certificates to us under date of July 10th, 1916.

Ques. Turn to your by-laws and show me the section authorizing the establishment of a branch office in the State of Pennsylvania? 20

Ans. I don't think it is covered by the by-laws, Mr. Stockwell; it is a charter provision.

Ques. Isn't there any by-law on that subject?

Ans. I don't think so.

Ques. Look at Article 4, Section 4; does that refer to the establishment of any branch office?

Ans. Section 4, did you say?

Ques. Yes; Section 5. Take the full article, Section 5, and read it. 30

Ans. "Section 5. The board of directors may hold its special or regular meetings, or any of them, in the City of Camden, New Jersey, or in the City of Williamsport, Pennsylvania, or in the City of Philadelphia, Pennsylvania, and the books of the company, except the stock and transfer book, may be kept in the office of the company in the City of Williamsport or in the said

City of Philadelphia. The stock and transfer book shall be kept at the office of the company in the said City of Camden, as required by law."

Ques. Did you have an office in Williamsport? Also read section 4.

10 Ans. "Section 4. Special meetings of the board of directors may be called by the president at any time, and shall be called by him or the secretary whenever requested in writing by any director. Special meetings of the board of directors shall be held at such place in the city of Camden, State of New Jersey, or in the city of Williamsport, State of Pennsylvania, or in the city of Philadelphia, State of Pennsylvania, and at such hour as shall be designated by the president or secretary, and notice in writing or in person of the date, hour and place of each special meeting of the board of directors shall be sent or mailed or given to each director at least four days previous to the time of holding such special meeting, and any business may be transacted at any such special meeting of the board of directors without being set forth in such notice."

20 Ques. Is there any other by-law that you know of authorizing the holding of meetings outside of the State of New Jersey?

Ans. No, sir; that is the only by-law I know of.

Ques. Or establishing an office in the State of Pennsylvania?

Ans. No, sir; the charter provides for it though, I think.

Ques. Have you the charter there?

30 Ans. Yes, sir.

Ques. Show me the charter provision authorizing the establishment of an office in Tower City, Pennsylvania.

Ans. Under the 7th article, section C, among the powers of the corporation: "To hold its regular or special meetings, or any of them, and have an office or offices and keep the books of this corporation, except the stock books and transfer books, outside of this State, in such

place or places as shall be determined upon from time to time by the board of directors of this corporation."

Ques. Now, have the board of directors determined to establish an office in the State of Pennsylvania at any time?

Ans. Yes.

Ques. When? Refer to the minutes.

Ans. Probably a little informally—I was going to explain that.

Ques. No, please refer to any minutes authorizing that.

Ans. I don't think I can show you any minute authorizing it. 10

Ques. There is no minute authorizing it?

Ans. I don't think I can show you here any minute until I refresh my memory a little bit. (After examination of book). I don't think there in any formal minute up to this year.

Ques. Is there any formal minute this year?

Ans. Yes. Under date of the 28th of February, 1916: "On motion of Mr. Schoffstall the office was fixed at the Commercial Hotel, Grant Avenue, Tower City, Pennsylvania." 20

Ques. That is February 28th, 1916?

Ans. Yes, sir.

Ques. Is there any direction given in that minute that the office be registered in Pennsylvania?

Ans. No.

Ques. You did register immediately afterwards, didn't you?

Ans. We didn't register until May. 30

Ques. May, 1916, you registered?

Ans. I think it was the first of May.

Ques. And you hadn't registered prior to that?

Ans. We re-registered. The company had been registered under the old act of Pennsylvania of 1900.

Ques. But had you registered under the act of 1911?

Ans. Not until this year.

Ques. The Water Company we have been speaking about is a holding company purely and simply, isn't it?

Ans. We designate that as the United Company.

Ques. Because of the fact that there is another water company?

Ans. Yes, sir.

Ques. And in September, 1915, had the United Company any asset aside from the stock of the Williams Valley Water Company?

10 Ans. Yes, sir.

Ques. What?

Ans. Stock of the Williams Valley Light, Heat & Power Company.

Ques. How many shares?

Ans. The Water Company?

Ques. Yes.

Ans. All the stock.

Ques. And how many shares of the Electric Company?

Ans. All the stock.

20 Ques. Did it have any other assets?

Ans. No.

Ques. The Electric Company stock was sold, was it not?

Ans. It was sold in this transaction of the 8th of September.

Ques. At the present time, therefore, the United Company has no asset except the stock of the Williams Valley Water Company?

Ans. That is all.

30 Ques. And in 1915, in October of that year, wasn't that stock of the Williams Valley Water Company held by the Pennsylvania Company under a trust agreement?

Ans. Yes, sir.

Ques. Giving the voting power to the Pennsylvania Company or to the bondholders under the trust agreement?

Ans. Yes, sir.

Ques. So that the United Company didn't even vote the stock of the Williams Valley Water Company?

Ans. No.

Ques. Well, you mean they did vote it?

Ans. They didn't vote it.

Ques. Did not vote it?

Ans. No, sir.

Ques. And the stock was registered in the name of the Pennsylvania Company as trustee on the books of the Williams Valley Water Company, was it not?

Ans. I am unable to say that.

10

Ques. Have you the books here?

Ans. Of the Williams Valley Water Company?

Ques. Yes.

Ans. No, sir.

Ques. Are you an officer in that company?

Ans. No, sir.

Ques. Then what business did the United Water Company do in the year 1915?

Ans. From the 18th day of May—prior to the 18th of May we secured an injunction in Dauphin County, Pennsylvania, restraining Mr. Shaw and his associates from interfering with the operation of the Williams Valley Water Company.

20

Ques. Yes. Now, what other business did it transact?

Ans. Well, as the owners of the stock of the—of a majority of the stock of the United Company, the United Company was obliged to preserve the property of the Williams Valley Water Company, to conduct its affairs and do whatever was necessary to keep it in working shape.

30

Ques. Do you mean as the owner of the majority of the stock of the Williams Valley Water Company?

Ans. No, as the owners of the majority of the stock of the United Water, Gas & Electric Company, which was the owner of all the stock of the Water Company.

Ques. I am talking about the United Water Company.

Ans. All right.

Ques. Not about you personally.

Ans. You asked what the United Company did.

Ques. Yes.

Ans. The United Company took charge of the property of the Williams Valley Water Company.

Ques. I see. Now, did the Williams Valley Water Company have a board of directors?

Ans. Yes.

Ques. Officers?

10 Ans. Yes.

Ques. President, vice president, and so on?

Ans. Yes, sir; and they are restrained from doing anything by an injunction granted by the Dauphin County court.

Ques. What other business did the United Company do in the year 1915?

Ans. Outside of conducting these affairs?

Ques. Aside from the lawsuit.

20 Ans. We managed the affairs of the Water Company, collected its rents, paid its bills, paid the interest on its bonds.

Ques. Did it transact any other business?

Ans. No.

Ques. Where was its office? You said it had a branch office in 1915, in Tower City.

Ans. The United Company?

Ques. Yes, the United Company. Where was that office?

30 Ans. At the Commercial Hotel, at Tower City.

Ques. Is that an office building?

Ans. No.

Ques. Was this a suite of rooms in that building?

Ans. No.

Ques. Was it a commercial hotel? Its name so indicates.

Ans. Yes, sir.

Ques. And whose room was it?

Ans. In the sitting-room, you might call it, or the gentlemen's parlor, is where we held our meetings.

Ques. Was it used exclusively by the United Water Company?

Ans. No, sir.

Ques. Was it used by the guests generally?

Ans. I suppose so, when they were there.

Ques. Except when you held your meetings there?

Ans. Yes, sir.

Ques. Any sign of the company on the door of the room? 10

Ans. No.

Ques. Anything around the room to indicate that it was the office of the United Water Company?

Ans. No.

Ques. Was there any agent of the company stationed there to transact any business for the company?

Ans. It wasn't necessary to have any there. The collection of the rents and the work on the Williams Valley Water Company was done at Williamstown. 20

Ques. I understand, but I want to find out what happened at this so-called branch office?

Ans. Very well. We met once a month, paid—

Ques. What county is Williamstown in?

Ans. Dauphin County,—paid any bills that were due, arranged for work to be done to take care of the property or to improve it, if it was needed, and conducted whatever business was necessary to carry on the Williams Valley Water Company. 30

Ques. Who were the officers of the Williams Valley Water Company?

Ans. P. B. Shaw, W. W. Hepburn and George Parkman. I don't recall the rest of them.

Ques. Had the United Company any physical assets aside from these stock transfer books?

Ans. No; and the ownership of this Williams Valley Water Company stock.

Ques. In October, 1915, the books of the corporation were not kept at the registered office in New Jersey, were they?

Ans. The stock transfer book?

Ques. Yes.

Ans. No, sir.

Ques. Were they there?

Ans. No, sir.

Ques. Why were they taken away from the registered office?

10 Ans. The first knowledge that I had of the stock transfer book was in April of 1915. We held a meeting of the stockholders on the 8th of April, at Camden, and at that meeting Mr. Shaw had the deputy sheriff meet us and serve notice of a proceeding that he had instituted in New Jersey, either at that meeting or a meeting at the same time, following, of the directors. Then Mr. Starr gave me this book, suggested that it hadn't been written up to date and that I should take it along and write it up. That is how it came into my possession; that is why

20 I took it along.

Ques. And you never returned it?

Ans. Never returned it, and it isn't written up any more than it was the day it left. As soon as I tackled it I found something that did not check and I quit.

Ques. Will you refer to your minutes and find an authorization for the acceptance of service of process in Schuylkill county on behalf of the United Water Company in this suit?

30 Ans. There isn't any.

Ques. There is none?

Ans. No, sir; I am sure I can say that.

Ques. The records show that you accepted service?

Ans. Yes, sir; as secretary of the United Company.

Ques. Why did you accept service?

Ans. Because I thought it was my duty to do it.

Ques. Did you know how long a time you had in which to answer interrogatories?

Ans. Well, I understood fifteen days.

Ques. But you answered them inside of a week, didn't you?

Ans. I think not.

Ques. Weren't the interrogatories given to you on the first and didn't you answer them on the 8th?

Ans. I think interrogatories were sent along about the 25th, as I recall.

Ques. At that time you had signed the agreement with Mrs. Hepburn for the purchase of stock from her, had you not? 10

Ans. We signed that.

Ques. And you knew that she claimed to be the owner of that stock and agreed to sell it to you?

Ans. Well, we knew so far as the agreement would give us any knowledge; yes.

Ques. And you assumed that she was the owner and she was to deliver it?

Ans. No; that is assuming. We didn't assume anything. We just simply agreed that the agreement as prepared by Mr. Williams, the original agreement, could be split into two parts, and it made no difference to us who made delivery of this stock provided everything else was done. 20

Ques. You weren't assuming that she was the owner at all?

Ans. We were not.

Ques. Why didn't you insist upon the party whom you supposed to be the owner signing the agreement?

Ans. We didn't care about that end of it.

Ques. You were putting up \$8,000, weren't you, for the stock? 30

Ans. Yes, sir. We didn't put it up until later, and we expected, when this agreement came along, that when the time came for settlement that Mrs. Hepburn or Mr. Hepburn or Mr. Shaw, whoever it was, would be ready to turn over everything they agreed to turn over and we would have the money ready.

Ques. You assumed that, notwithstanding the fact that you had an agreement with Mrs. Hepburn?

Ans. Very well. We assumed they were acting in good faith. We acted in good faith ourselves, put up our money.

Ques. You knew she claimed to be the owner on June 23d, 1915, when the agreement came to you, did you not?

Ans. We didn't assume anything about it.

10 Ques. Wasn't it recited that she was the owner in the agreement?

Ans. Yes, sir.

Ques. Now, when you came to answer the interrogatories, on behalf of your company, as to the ownership of stock in your company by P. B. Shaw, did you make any reference to the fact that Mrs. Hepburn claimed to be the owner of those shares of stock?

Mr. Connelly: I object.

20 The Vice Chancellor: I will let it be received, but I do not see what good it does. What is it you want to develop, Mr. Stockwell? Suppose he did—what difference does it make?

Mr. Stockwell: Well, I don't know; at the same time, the attitude of the witness did not exactly please me.

30 The Vice Chancellor: Let it be answered, if you think it is of any value.

Mr. Starr: May I state an objection? Mr. Stockwell is assuming that the document contains a statement that does not exist, and I do not think that Mr. Bressler was called upon to say who the owner of the stock was; simply called upon to say in whose name the stock stood on the books of the company.

The Vice Chancellor: Well, you are assuming now what appears of record any way, aren't you?

Mr. Stockwell: Well, the records will show.

Mr. Starr: Yes.

The Vice Chancellor: Doesn't the record show?

Mr. Stockwell: Yes, the record will show.

10

Ques. I think you said that the undersigned form of agreement which you produced was prepared in the office of C. J. Hepburn?

Ans. No; Carroll R. Williams.

Ques. I misunderstood you, then.

Ans. Mr. Carroll R. Williams prepared all the agreements.

Ques. Did you have a meeting in Mr. C. J. Hepburn's office at all?

Ans. Mr. W. W. Hepburn, Mr. Williams and myself met at his office. Mr. C. J. Hepburn was not present. I think he was already sick; I think that was Mr. W. W.'s statement, that Mr. C. J. was down with typhoid.

Ques. I understood you to say that Mr. C. J. Hepburn was there.

Ans. No; it was at his office, in the Bailey Building.

By Mr. Hepburn:

30

Ques. Mr. Bressler, you made a statement in direct examination that you received a notice from me in the latter part of October. Now, as a matter of fact, was that not a notice dated October 29th, signed by Jane Shaw Hepburn? You have it there, haven't you?

Ans. I think that is right, yes; but it came from you.

Ques. You got that in the mail, didn't you?

Ans. Yes, sir.

Ques. You mean in one of my envelopes?

Ans. Yes. Well, let me see. You see, Mr. Hepburn, there is so much in this thing that was done in a roundabout way. You would send your letters to Mr. Williams to forward to me, and I would answer you in the same way.

Ques. I am not speaking of that.

Ans. Well, I think that came by that route.

10 Ques. Well, that was the letter of October 29th, in which Jane Shaw Hepburn notified you of her claim of ownership and demanded the issuance of that stock?

Ans. Yes, sir.

Ques. That was before you answered the interrogatories?

Ans. Yes, sir.

Ques. And you made no answer of her claim to ownership of the stock in your answer to the interrogatories?

20 Ans. No, sir.

Ques. Why?

Ans. Because I didn't choose to. As I told you in your office, when Mr. Williams and I were there, we didn't propose to interfere; that we would answer the interrogatories exactly as they said and then let the Court determine whose stock it was.

Ques. And you remember at that time, do you not, that I requested you to at least show that notice to your counsel in Schuylkill County?

30 Ans. Yes, sir.

Ques. And you refused?

Ans. Yes, sir.

Ques. Why did you so refuse?

Ans. Because I didn't care to mix in any further.

Ques. Do you recall also that I stated to you that your duty as a director of the United Water Company was to give the information—protect them in as far as as you could?

Ans. You may have stated so.

Ques. Don't you recall further that I also stated to you that if the stock was tied up by this attachment proceeding we might lose the consent of the bank to the endorsement of these bonds that you gentlemen were so anxious to secure?

Ans. Yes, sir.

Ques. Do you remember what you answered me?

Ans. I don't recall.

Ques. Didn't you say that Mr. Saul said to you he had another way of getting that; you needn't bother yourself about it? 10

Ans. I never made any such statement, Mr. Hepburn.

Ques. Now, are you sure of that?

Ans. Yes, sir.

Ques. Who was Mr. Carroll Williams? He represented you people in Philadelphia?

Ans. Yes, sir.

Ques. And the United Water Company? 20

Ans. Yes, sir.

Ques. Don't you remember that Mr. Carroll Williams also said to you that he would advise you to show that notice to your counsel in Schuylkill County, and you refused again?

Ans. I think Mr. Williams said that he did not think it would do any harm if I did show it.

Ques. Didn't he say, "Mr. Bressler, I advise you to do it. Your duty calls for it?"

Ans. I don't recall any such statement, Mr. Hepburn. I do recall you tendering us a bond and telling us—the bond wasn't worth anything; we wouldn't take it. 30

Ques. The Fidelity Company of Maryland is no good, you mean?

Ans. No, sir; I hold their bond and cannot collect a cent on it.

Ques. You said that the first meeting you had relative to the stock with Mr. W. W. Hepburn was in Mr. Williams' office in Philadelphia—relative to the purchase of this stock, at which the original agreement was prepared. Now, he testified he had a meeting with you on June 2d.

Ans. Yes, sir.

Ques. Prior to that time, in Tower City. Is that so?

Ans. He was in Tower City on the 2d of June, but we met at Mr. Williams' office in May.

10 Ques. Did you have any meeting with Mr. Hepburn up at Tower City before Mr. Hepburn mentioned?

Ans. All the arrangements had been made for his meeting in Tower City as the result of the meeting of Mr. Fees, Mr. Snyder and Mr. Schoffstall and Mr. Seabrease, Mr. Lucas, Mr. W. W. Hepburn—I think that was all that was there.

Ques. Now, you say the papers, then, were prepared before the meeting at Tower City?

Ans. The understanding was arrived at before the meeting in Tower City.

20 Ques. When were the first papers signed?

Ans. The 2d of June.

Ques. Who prepared them?

Ans. They were written up right in the office; I wrote them.

Ques. You wrote them?

Ans. Yes, sir; at Mr. Hepburn's dictation; we worked them out together sitting there.

Ques. Are those the papers? (Exhibiting to witness.)

30 Ans. He sent on typewritten copies later of them.

Ques. These are the papers, are they not?

Ans. I think so. Yes, sir; those are the papers.

Mr. Hepburn: I would like them marked for identification.

(Said papers marked C-6 and C-7 for identification.)

Ques. And you say at that time that he did not tell you, as he has stated, that Mrs. Hepburn was the owner of that stock?

Ans. No, sir.

Ques. You feel sure on that?

Ans. Yes, sir.

Ques. One thing more, Mr. Bressler. Won't you show me on the minutes of the United Water Company any authority whatever for the United Water Company taking over and running the business of the Williams Valley Water Company in Dauphin county, Pennsylvania. 10

Ans. I cannot do that; it is not on the minutes, sir, but it is one of the provisions of the deed of trust.

Ques. What?

Ans. That they shall maintain the property, care for it, preserve its existence.

Ques. You gentlemen, as individuals, had filed the bill in Schuylkill county to enjoin the board of directors from proceeding?

Ans. No; the Sterling Electric Company filed that.

Ques. And the Sterling Electric Company at that time was conducting its operation? 20

Ans. Yes, sir.

Ques. Didn't they continue to operate it?

Ans. Yes, sir; up to the time of the sale.

Ques. So that in May, 1915, the Sterling Electric Company was conducting the business of the Williams Valley Water Company?

Mr. Archer: It seems to me that the cross-examination has proceeded beyond all limit. It has got to a point now where we are all wasting our time. I cannot see how it is in any way related to the matter in issue. 30

Ans. Yes, sir.

The Vice Chancellor: I would like to know the importance of whether they do business in Pennsylvania or not.

Mr. Hepburn: I do not think it makes any difference at all under the attachment proceeding. That is all.

GEORGE PARKMAN, recalled.

By Mr. Connelly:

10 Ques. Do these books of Mr. Shaw show his financial condition, beginning, say, in 1906—or, whatever it is—statement of assets and liabilities?

Ans. Yes; they will show that.

Ques. Is it on a sheet to which you can refer?

Ans. No.

Ques. Can you tell me what his assets and liabilities were January 1st, 1907, for instance?

Ans. Not without going over the books; not unless I took off a statement.

20 Ques. Did you take off statements annually?

Ans. Yes.

Ques. Do you recall what his financial condition was January 1st, 1907, for instance—the amount of his assets and liabilities?

Ans. About a million and two hundred thousand net.

Ques. A million and two hundred thousand dollars net?

Ans. Yes.

Ques. And what about the next year, 1908?

Ans. Practically the same.

30 Ques. 1909?

Ans. About the same.

Ques. 1910?

Ans. A little less.

Ques. How much less?

Ans. About \$300,000.

Ques. Less than a million?

Ans. Yes; about between eight and nine hundred thousand dollars.

Ques. That is January, 1910?

Ans. Yes.

Ques. January, 1911?

Ans. A little less.

Ques. How much less?

Ans. About a hundred thousand dollars.

Ques. About a hundred thousand dollars?

Ans. \$100,000 less.

Ques. Making a total of how much?

Ans. About \$700,000 net.

10

Ques. And 1912?

Ans. About \$500,000 net.

Ques. And 1913?

Ans. Considerably less.

Ques. Well, how much less?

Ans. Well, it all depends, of course, how you value the securities.

Ques. Well, you have been valuing them heretofore?

Ans. Well, we valued the Pennsylvania Marble & Granite Company as a going concern.

20

Ques. Was it a going concern?

Ans. It was a going concern.

Ques. Well, January 1st, 1912, what were his net assets?

Ans. I couldn't tell you without going over the stocks.

Ques. But you can tell up to that time?

Ans. Yes.

Ques. Why can't you tell as to 1912?

Ans. Well, because the securities at that time had a totally different valuation.

30

Ques. Had their value depreciated?

Ans. Yes, considerably.

Ques. To what extent?

Ans. Well, as I say, I would be unable to tell unless I went over the statement.

Ques. Well, when you left his employ his liabilities exceeded his assets, didn't they?

Ans. Well, that is almost impossible to say. His securities are exactly the same, as far as the par valuations go, but they depreciated in value, and therefore it all depends what you can realize from those securities.

Ques. Well, at the time you left his employ his liabilities exceeded his assets,—is that correct?

Ans. I wouldn't say that.

Ques. The bank loans and other liabilities exceeded his assets, did they not?

10 Ans. I wouldn't say that.

Ques. Did they exceed his assets January 1st, 1915?

Ans. I wouldn't say that.

Ques. But you are absolutely sure that back in 1907 he was worth over a million dollars?

Ans. Yes, sir.

Ques. And from 1912 down you haven't the slightest idea what he was worth?

Ans. No.

Ques. And you were his bookkeeper all that time?

20 Ans. Yes, sir.

Ques. Making up statements each year?

Ans. Yes, sir.

Ques. And your recollection of 1907 is perfectly clear but 1915 you are absolutely blank,—that is correct?

Ans. Yes.

Ques. Will you make up a statement of his assets as of January 1st, 1915, and as of the time when you left his employ?

Ans. Will I make it up?

30 Ques. Yes.

Ans. Who will compensate me for it?

Ques. How long will it take you to make it?

Ans. About a week.

Ques. From those books?

Ans. Yes, from those books.

Mr. Connelly: We ask that the books be left subject to our inspection.

The Vice Chancellor: You can have them until the end of the trial, no longer.

HARPER T. BRESSLER, recalled.

By Mr. Connelly:

Ques. Mr. Bressler, I understand you want to read another minute. 10

Ans. In going over the minute book I find—Mr. Stockwell asked in regard to the minutes showing anything fixing Tower City as the place for holding the meeting. In the minutes of April 15th, 1915, at a meeting held at Camden, N. J., I find this minute: "Mr. Bressler moved that the first Friday of every month, at 7.30 o'clock in the evening, at the office of the Sterling Consolidated Electric Company, in the Borough of Tower City, Pa., be designated as the time and place for the holding of the regular meetings of the directors. The above motion was duly seconded, put to vote and carried." I would just like to explain that the Commercial Hotel was the place of—the office of the Sterling Consolidated Electric Company. 20

Mr. Connelly: I offer in evidence exemplified copy of record of suit of Pennsylvania Company for Insurance on Lives & Granting Annuities against P. B. Shaw, No. 318, June Term, 1915. C. P. No. 3.

(Said paper marked Exhibit D-9). 30

GEORGE M. ROADS, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says—

By Mr. Connelly:

Ques. Mr. Roads, where do you reside?

Ans. Pottsville, Pa.

Ques. What is your profession?

Ans. I am a member of the Bar.

Ques. And were you the attorney for the Pennsylvania Company in the matter which resulted in the attachment against P. B. Shaw and the proceeding of the sale of the stock?

10 Ans. I was.

Ques. Are those proceedings which occurred in Schuylkill County, Pa., regular?

Mr. Stockwell: I object to that. They speak for themselves. Have you put that record in?

Mr. Connelly: Yes.

Mr. Stockwell: The record is in.

20 The Vice Chancellor: It is competent for an attorney to testify to the law of a State. If there is any question raised on these matters I suppose it would be proper to submit it to the judgment of a member of the Bar of Pennsylvania, but do you understand there is such question?

Mr. Connelly: I will withdraw that question.

30 Ques. Are you familiar with the laws of Pennsylvania?

Ans. Somewhat.

Ques. With regard to the issuing of attachments and executions against foreign corporations?

Ans. I am to some extent.

The Vice Chancellor: Is it not your understanding, Mr. Connelly, that an exemplified copy of a judgment

in a foreign jurisdiction carries with it at least a presumptive assumption of its validity? If a court has entered a judgment I apprehend that a court of another State must assume that the judgment is regular. If it is attacked upon any ground then perhaps it might be necessary to have the opinions of counsel in the other State, but I should think not otherwise. Does it not carry with it on its face a presumption of regularity and validity?

Mr. Archer: If your Honor please, I suggested to Mr. Connelly that it might be well to prove by a member of the Pennsylvania Bar that under the law of the State of Pennsylvania the stock of a foreign corporation doing business in Pennsylvania would be subject to the lien of an attachment. 10

The Vice Chancellor: If you think it necessary introduce it.

By the Vice Chancellor:

Ques. Is that the law of Pennsylvania? 20

Ans. Yes, sir.

By Mr. Archer:

Ques. Did the Pennsylvania Company purchase this stock of the United Water Company at that sale under the attachment in Schuylkill County?

Mr. Stockwell: That is admitted.

Ans. Yes; the company purchased the stock at the Sheriff's sale on a judgment entered, on the answers of the garnishee, the United Water, Gas and Electric Company, it was entered in the court and a Fi. Fa. regularly issued to sell that stock. 30

No cross-examination.

Defendants rest.

WILLIAM WILLIAMSON HEPBURN, recalled.

By Mr. Stockwell:

Ques. You have heard the testimony of Mr. Bressler with reference to a telephone conversation by you with some one in Philadelphia at a meeting you had with Mr. Bressler and his friends up in Tower City. Did you have such a conversation?

10 Ans. I think Mr. Bressler stated correctly, it was a telephone conversation between myself and some person in Williamsport, Pa., at that time; at a meeting I held with them in Tower City I did have a conversation with Mr. Shaw in Williamsport.

Ques. And what was that conversation?

20 Ans. The conversation was, as I repeated before, that Mr. Shaw's attorney, Mr. Seth T. McCormick, said that the agreement which had been prepared on the basis that Mr. Shaw and myself were the parties of the one part and the Tower City people parties of the other part, was not in proper form and he would not advise Mr. Shaw to execute it in that way, it would have to be separated and put in two different agreements. I certainly made no such reference to putting in the name of stock of Shaw. I told Mr. Bressler and his people that he did not understand the thing. I feel sure I showed authority from Mr. Shaw authorizing me to act for him. I told him I was acting for Mrs. Hepburn, who owned the stock, and that I represented the General Utilities Company, of Baltimore, and I made an agreement with him that night in which I myself acted
30 for all these parties and agreed to sell the stock, and also for the purchase of the electric property.

Ques. I call your attention to a paper which is called an unsigned form of agreement, D-5. Whom did you represent as party of the first part to that agreement? I see you are down there as one of the parties of the first part.

Ans. I represented Mrs. Hepburn.

Mr. Connelly: I object. The agreement is in evidence and ought to speak for itself.

Ques. It states that the parties of the first part own or control 380 shares of the capital stock of the United Water Company's stock.

The Vice Chancellor: Does it state who the parties of the first part are?

Mr. Stockwell: Yes. Mr. Hepburn is one of the parties. 10

Mr. Connelly: And Mr. Shaw is the other.

The Vice Chancellor: What more do you want?

Mr. Stockwell: He has already said he acted for his wife in the preparation of this agreement.

The Vice Chancellor: I do not think he could say it more emphatically than he has said it.

By Mr. Connelly: 20

Ques. Did you have a power of attorney from your wife?

Ans. No; I had no written power of attorney.

Ques. You had a written power of attorney from Mr. Shaw?

Ans. Yes, sir.

Ques. Did you have one from the General Utilities Company?

Ans. I think I had one later when it came to the payment of the \$5,000. I was designated in that contract as the agent for the company, and I took the \$5,000 up there. I think Mr. Bressler and these other gentlemen recognized that I was representing the General Utility Company. 30

Both sides rest.

EXHIBIT C-1.

Memorandum of six stock certificates, marked together as Exhibit C-1.

Certificate No. 45 for 100 shares of United Water, Gas & Electric Company, in the name of P. B. Shaw, dated April 29, 1910, endorsed on the back as follows:

10 "For value Received hereby sell, assign and transfer unto

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated

19

P. B. SHAW."

20 Sealed and Delivered
in the presence of
W. W. HEPBURN.

\$2.00 revenue stamp
cancelled by me.

Penalty remitted.

E. LEDERER, Coll.

10/28/15 F. S. M., Dep. Coll.

30 Certificate No. 44 for 100 shares of United Water, Gas & Electric Company, in the name of P. B. Shaw, dated April 29, 1910, endorsed on the back as follows:

"For value Received hereby sell, assign and transfer unto

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Attorney to

transfer the said stock on the Books of the within named
Company with full power of substitution in the premises.

Dated 19

P. B. SHAW."

Sealed and Delivered
in the presence of
W. W. HEPBURN.

\$2.00 revenue stamp
cancelled by me.

Penalty remitted.

E. LEDERER, Coll.

10

10/28/15 F. S. M., Dep. Coll.

Certificate No. 46 for 50 shares of United Water, Gas
& Electric Company, in the name of P. B. Shaw, dated
April 29, 1910, endorsed on the back as follows:

"For value Received hereby sell, assign and transfer
unto

Shares of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and ap- 20
point Attorney to

transfer the said stock on the Books of the within named
Company with full power of substitution in the premises.

Dated 19

P. B. SHAW."

Sealed and Delivered
in the presence of
W. W. HEPBURN.

\$1.00 revenue stamp
cancelled by me.

30

Penalty remitted.

E. LEDERER, Coll.

10/28/15 F. S. M., Dep. Coll.

Certificate No. 47 for 50 shares of United Water, Gas
& Electric Company, in the name of P. B. Shaw, dated
April 29, 1910, endorsed on the back as follows:

“For value Received hereby sell, assign and transfer unto Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Attorney to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated 19

P. B. SHAW.”

10 Sealed and Delivered
in the presence of
W. W. HEPBURN.

\$1.00 revenue stamp
cancelled by me.

Penalty remitted.

E. LEDERER, Coll.

10/28/15 F. S. M., Dep. Coll.

20 Certificate No. 48 for 49 shares of United Water, Gas & Electric Company, in the name of P. B. Shaw, dated April 29, 1910, endorsed on the back as follows:

“For value Received hereby sell, assign and transfer unto

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Attorney to

transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated 19

P. B. SHAW.”

30 Sealed and Delivered
in the presence of
W. W. HEPBURN.

98c. revenue stamp
cancelled by me.

Penalty remitted.

E. LEDERER, Coll.

10/28/15 F. S. M., Dep. Coll.

Certificate No. 39 for 1 share of United Water, Gas & Electric Company, in the name of Lewis Starr, dated December 15, 1904, endorsed on the back as follows:

"For value Received hereby sell, assign and transfer unto

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Attorney to transfer the said stock on the Books of the within named Company with full power of substitution in the premises. 10

Dated

19

LEWIS STARR."

Sealed and Delivered

in the presence of

MARGARET H. SCULLY.

2c. revenue stamp

cancelled by me.

Penalty remitted.

E. LEDERER, Coll.

10/28/15 F. S. M., Dep. Coll. 20

EXHIBIT C-2.

Is agreement dated June 23, 1915. Copy of which is attached to the bill as Exhibit C-1, and appears on page 16 of this State of Case.

30

EXHIBIT C-3.

Is agreement dated July 9, 1915. Copy of which is attached to answer and counter-claim of The Pennsylvania Company, as Exhibit D-5, and appearing on page 40 of this State of Case.

EXHIBIT D-4.

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY.

10	PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, vs. P. B. SHAW. \$2.50 pd. by Atty. No. 23. Nov. TERM, 1915.	}	No. 340. NOVEM- BER TERM, 1915. ATTACHMENT EXECUTION WITH NOTICE TO UNITED WATER, GAS AND ELECTRIC COM- PANY AS GAR- NISHEE.
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Issued Oct. 19th, 1915.

20 Nov. 1, 1915. Interrogatories filed.

Same day Rule entered in the above stated case on the above named Garnishee to file its answer to the appended Interrogatories within twenty days of service or judgment by default. Sec. Leg.

And now, November 1, 1915, service of a copy of the within Interrogatories and rule to answer is hereby accepted on behalf of the United Water, Gas and Electric Company, Garnishee, within named.

30

HARPER T. BRESSLER,
Secretary.

November 8, 1915, Answer to Interrogatories filed.

Served the within writ on United Water, Gas and Electric Company by giving to Harper T. Bressler, secretary of said company, and Renn W. Fells, treasurer of said company, a true and attested copy of the same and

making to them the contents thereof personally on Oct. 19th, 1915, Nihil Habet as to P. B. Shaw.

So answers

CHARLES F. DITCHEY,
Sheriff.

And now, November 15, 1915, on motion of Geo. M. Roads, Esq., attorney for the plaintiff above named, judgment is hereby entered for the plaintiff upon the answers filed by the Garnishee above named to plaintiff's 10 Interrogatories filed on November 1, 1915, as follows: That there is standing on the books of the United Water, Gas and Electric Company, the Garnishee above named, the following shares of stock belonging to P. B. Shaw, defendant above named, with the right with the plaintiff hereby to proceed by execution on its judgment No. 23, November, 1915 (for \$93,693.94), with interest, &c., or so much as is due thereon against P. B. Shaw, the defendant, to sell three hundred and seventy-nine shares of 20 stock standing on the books of the United Water, Gas and Electric Company, Garnishee above named, in the name of P. B. Shaw, as may be necessary to satisfy the said judgment.

Certificate No.	32	for	15	shares
"	"	36	"	5
"	"	37	"	10
"	"	44	"	100
"	"	45	"	100
"	"	46	"	50
"	"	47	"	50
"	"	48	"	49

30

By the Court.

C. N. BRUMM,
A. L. J.

Entered in Judgment I. & D.

Levied on personal property of defendant as per schedule hereto annexed, and after due advertisement, ac-

ording to law, sold the same Dec. 14, 1915, for the sum of (\$40.00) which was applied in part payment of costs and balance of costs paid by plaintiffs.

Atty. Nulla. Bona. as to debt.

So answers

CHARLES F. DITCHEY,
Sheriff.

	T. & E.....	\$2 50
	Atty.	3 00
10	Crier	25
	Sat.	30
	Prot. Reese, Interrogatories.....	1 00
	Prot. Reese	25
	Shff. Ditchey	8 55
	Prot. Reese	25
	Atty. Roads	1 00
	Fi. Fa. Jany., 1916—9 Atty.....	1 00
	Prot. Reese	50
	Shff. Ditchey	27 80
20		<hr/>
		\$46 40

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY.

	PENNSYLVANIA COMPANY FOR	} No. 23. NOVEM- BER TERM, 1915.
	INSURANCE ON LIVES AND	
30	GRANTING ANNUITIES,	
	vs.	
	P. B. SHAW.	

Judgment September 8, 1915, for \$93,693.94, with interest from July 13, 1915, in favor of the plaintiff and against the defendant, to No. , November Term, 1915.

Issue a writ of attachment execution against the defendant to attach and levy in satisfaction of said judgment all of the stock of the United Water, Gas and Electric Company, which still stands in the name of P. B. Shaw, defendant above named, on the books of the said United Water, Gas and Electric Company, or held otherwise by said company, and insert in said writ a clause of summons in the nature of a *Scire Facias* against the said United Water, Gas and Electric Company, as Garnishee, requiring it to appear at the next term of said court and show cause why said judgment shall not be levied of the said stock of the defendant in the hands of the said company. 10

Returnable Sec. Leg.

GEO. M. ROADS,
Attorney for Plaintiff.

To JOHN W. REESE, ESQ.,
Prothonotary,
Pottsville, Pa.

October 19, 1915.

Attorney for Plaintiff. 20

SCHUYLKILL COUNTY, SS.

The Commonwealth of Pennsylvania, to
[SEAL.] the Sheriff of Schuylkill county, Greeting:

Whereas, Pennsylvania Company for Insurance on Lives and Granting Annuities obtained a judgment in our Court of Common Pleas of the county aforesaid, to November Term, 1915, No. 23, against a certain P. W. Shaw for the sum of ninety-three thousand six hundred and ninety-three dollars and ninety-four cents (\$93,693.-94), and which judgment is still due and unpaid. And whereas, it is alleged that the said defendant is entitled to receive from a certain United Water, Gas and Elec- 30

tric Company a sum of money sufficient to satisfy and pay the judgment aforesaid of the said plaintiff, and the said plaintiff praying that a convenient remedy for the recovery of the said judgment out of the moneys in the hands of the said Garnishee as is alleged may be had, and we being willing that those things which are rightly done in our said Court may be duly executed, do command you, that you attach all and singular the debt or moneys in the hands of Garnishee as aforesaid, and payable to the said defendant, and all of the stock of the
10 United Water, Gas and Electric Company which still stands in the name of P. B. Shaw, defendant, above named, on the books of the said United Water, Gas and Electric Company or held otherwise by said company, or in which the said defendant may be interested, and that you, by honest and lawful men of your bailiwick, make known to the said defendant and Garnishee as aforesaid, that they be and appear before our Judges at Pottsville, at our Court of Common Pleas, there to be
20 held on the second Monday of November next, to show if anything they have or know to say why the aforesaid plaintiff execution for the aforesaid judgment and costs, &c., against the said defendant as aforesaid, of the moneys of the said defendant in the hands of Garnishee as aforesaid being ought not to have. And have you then there the names of those persons by whom you shall make it known to them and this writ.

Witness, the Honorable H. O. BECHTEL, ESQUIRE,
President of our said Court at Pottsville, the 19th day of
30 October, A. D. one thousand nine hundred and fifteen.

JOHN W. REESE,
Prothonotary.

Served the within writ on United Water, Gas and Electric Company by giving to Harper T. Bressler, secretary of said company, and Renn W. Fees, treasurer of said company, a true and attested copy of the same and mak-

ing known to them the contents thereof personally on October 19th, 1915. Nihil Habet as to P. B. Shaw.

So answers

CHARLES F. DITCHEY,
Sheriff.

IN THE COURT OF COMMON PLEAS OF 10
SCHUYLKILL COUNTY,

OF NOVEMBER TERM, 1915. No. 340.

PENNS CO. FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, vs. P. B. SHAW.	}	ATTACHMENT SUR JUDGMENT WITH CLAUSE OF SCIRE FACIAS TO THE UNITED WATER, GAS AND ELEC- 20 TRIC COMPANY OF TOWER CITY.
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INTERROGATORIES TO BE EXHIBITED TO SAID GARNISHEE.

1. Do you know P. B. Shaw, of whom you are the Garnishee in the above proceedings?

2. Have you any commercial or other transactions with the said P. B. Shaw? If yea, what was the state of your accounts with him on the 19th day of October, 1915 (date of the service of attachment.) Annex to your answer a copy of your account with him as it was on that day. 30

3. Was there or was there not a balance in your hands in favor of the said P. B. Shaw on the 19th day of Oc-

tober, 1915, or any time since? If yea, state the amount particularly.

4. Had you in your possession any goods or merchandise, money or effects, of any nature whatever, belonging to the said P. B. Shaw on the said 19th day of October, 1915, or at any time since? If yea, state the nature, quality and value of said goods, merchandise, money or effects.

10 5. Were you not, on the 19th day of October, 1915, indebted to the said P. B. Shaw in some way? If yea, in what way, and in what amount? or have you not since become so indebted, and if so, when and how?

6. Had you standing on the books of your company, or otherwise, in your possession or control, or that of any of your officials, any shares of the capital stock belonging to the said P. B. Shaw? If yes, state the number of shares.

State particularly with the number of the certificates.

20

GEO. M. ROADS,
Attorney for Plaintiff.

November 1, 1915, Rule entered on above named Garnishee to file answer within twenty days from date of service or judgment by default.

Extract from the Records.

JOHN W. REESE,
Prothonotary.

30

And now, November 1, 1915, service of a copy of the within Interrogatories and Rule to Answer is hereby accepted on behalf of The United Water, Gas and Electric Company, Garnishee within named.

HARPER T. BRESLER,
Secretary.

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY.

PENNA. CO. FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, vs. P. B. SHAW.	}	No. 340. NOVEMBER TERM, 1915. ATTACHMENT SUR JUDG- MENT WITH CLAUSE OF SCIRE FACIAS TO THE UNITED WATER, GAS & ELECTRIC COM- PANY OF TOWER CITY, GARNISHEE.	10
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ANSWER OF THE UNITED WATER, GAS & ELECTRIC COMPANY, GARNISHEE ABOVE NAMED, TO THE RULE DATED NOVEMBER, 1915, ENTERED AGAINST THE SAID GARNISHEE TO FILE ITS ANSWER.

The said The United Water, Gas and Electric Company, garnishee above named, answers the interrogatories exhibited to it in the attachment executions sur judgment above stated as follows: 20

1. Do you know P. B. Shaw, of whom you are the garnishee in the above proceedings?

Answer. Yes.

2. Have you any commercial or other transactions with the said P. B. Shaw? if yea, what was the state of your accounts with him on the 19th day of October, 1915, (date of the service of attachment). Annex to your answer a copy of your account with him as it was on that day. 30

Answer. Yes. For further answer to this interrogatory see the answer to question No. 6.

3. Was there or was there not a balance in your hands in favor of the said P. B. Shaw on the said 19th day of October, 1915, or any time since? If yea, state the amount particularly.

Answer. No, and for further answer see answer to question No. 6 below.

4. Had you in your possession any goods or merchandise, money or effects of any nature whatever belonging to the said P. B. Shaw on the said 19th day of October, 1915, or at any time since? If yea, state the nature, quality and value of said goods, merchandise, money or effects.

Answer. None other than is stated in the answer to question No. 6 below.

10 5. Were you or not on the 19th day of October, 1915, indebted to the said P. B. Shaw in some way? If yea, in what way, and in what amount? or have you not since become indebted, and if so, when and how?

Answer. No.

6. Had you standing on the books of your company or otherwise in the possession or control, or that of your officials, any shares of the capital stock of your company belonging to the said P. B. Shaw? If yea, state the number of shares. State particularly with the number of the certificates.

20 Answer. The following stock of the United Water, Gas and Electric Company is standing upon the books of the said company in the name of P. B. Shaw, the defendant above named:

No. of Certificate.	No. of Shares.	Date of Transfer.
32	15	Feb. 12, 1900
36	5	Feb. 12, 1900
37	10	Feb. 12, 1900
44	100	Apr. 29, 1911
45	100	Apr. 29, 1911
30 46	50	Apr. 29, 1915
47	50	Apr. 29, 1915
48	49	Apr. 29, 1915

Total shares379

THE UNITED WATER, GAS AND ELECTRIC COMPANY.
 (Corporate Seal.)
 HARPER T. BRESSLER, Secretary.
 By B. W. FEES, President.

SCHUYLKILL COUNTY, ss.

Personally appeared before me the undersigned, a justice of the peace in and for said County, Harper T. Bressler, secretary of the United Water, Gas and Electric Company, who being duly sworn, saith that the facts set forth in the foregoing answers to Interrogatories are to the best of his knowledge, information and belief, true.

(Corporate Seal)

HARPER T. BRESSLER.

Sworn and subscribed before me this 3rd day of November, 1915 10

EUGENE HORN, J. P.

My commission expires first Monday in January, 1920.

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY.

20

PENNA. CO. FOR INSURANCE
ON LIVES AND GRANTING
ANNUITIES,

vs.

P. B. SHAW.

No. 23. NOVEMBER TERM,
1915.

No. 340. NOVEMBER
TERM, 1915.
ATTACHMENT SUR JUDG-
MENT WITH CLAUSE
OF SCIRE FACIAS TO
THE UNITED WATER,
GAS & ELECTRIC COM-
PANY OF TOWER CITY,
GARNISHEE.

30

And now, November 15th, 1915, on motion of Geo. M. Roads, Esq., attorney for the plaintiff above named, judgment is hereby entered for the plaintiff upon the answers filed by the Garnishee above named, to plaintiff's Interrogatories filed on November 1, 1915, as follows: That there is standing on the books of the United Water, Gas and Electric Company, the Garnishee

above named, the following shares of stock belonging to P. B. Shaw, defendant above named, with the right in the plaintiff hereby to proceed by execution on its Judgment No. 23, November Term, 1915, for \$93,693.94, with interest, etc., or so much as is due thereon, against P. B. Shaw, the defendant, to sell three hundred and seventy-nine shares of stock standing on the books of The United Water, Gas and Electric Company, Garnishee above named, in the name of said P. B. Shaw, as may be necessary to satisfy the said judgment.

Certificate No.	32	for	15	shares
"	"	36	"	5
"	"	37	"	10
"	"	44	"	100
"	"	45	"	100
"	"	46	"	50
"	"	47	"	50
"	"	48	"	49

20

By the Court,
C. N. BRUMM, A. L. J.

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY.

EXECUTION DOCKET No. 40, Page 370.

30	PENNA. CO. FOR INS. ON	}	No. 9 JANUARY TERM,
	LIVES, &C.,		1916.
	vs.		
	P. B. SHAW.	}	Fl. Fa. DEBT \$93,693.94.
	340 Nov. T., 1915.		CERTIFICATE OF STOCK.
	23 Nov. T., 1915.		SEE JUDG. TO 340 Nov., 1915. INT FROM

ISSUED Nov. 18, 1915.

IN THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY.

PENNA. CO. FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, vs. P. B. SHAW. JUDGMENT No. 23 Nov. TERM, 1915. NOVEMBER 15, 1915, JUDG- MENT AGAINST GARNISHEE.	}	No. 340. NOVEMBER TERM, 1915. ATTACHMENT SUR JUDG- MENT WITH CLAUSE OF SCIRE FACIAS TO THE UNITED WATER, 10 GAS & ELECTRIC COM- PANY OF TOWER CITY, GARNISHEE.
---	---	--

Issue a writ of Fieri Facias against P. B. Shaw, the defendant above named, with directions to levy on three hundred and seventy-nine shares of stock standing on the books of The United Water, Gas and Electric Company, in the name of P. B. Shaw, the defendant above named; and to sell as many of said shares as may be necessary to satisfy the judgment above stated against P. B. Shaw, the defendant, for \$93,693.94 and costs. 20

Said shares being identified as follows:

Certificate No. 32	for	15	shares	
"	"	36	"	5
"	"	37	"	10
"	"	44	"	100
"	"	45	"	100
"	"	46	"	50
"	"	47	"	50
"	"	48	"	49

30

Returnable Sec. Leg.

To JOHN W. REESE, Esq.,
Prothonotary.

GEO. M. ROADS,
Attorney for plaintiff.

Nov. 17, 1915.

Tower City, Pa., Dec. 2, 1915.

Levied on the following personal estate, to wit:

Certificates No. 32 for 15 shares, No. 36 for 5 shares, No. 37 for 10 shares, No. 44 for 100 shares, No. 45 for 100 shares, No. 46 for 50 shares, No. 47 for 50 shares, No. 48 for 49 shares of stock of The United Water, Gas and Electric Co., making in all 379 shares of stock as the property of P. B. Shaw.

So answers

CHAS. F. DITCHEY,
Sheriff.

10

SCHUYLKILL COUNTY, SS:

Fieri Facias.

The Commonwealth of Pennsylvania, to
[SEAL] the Sheriff of Schuylkill County, Greeting:

We command you, that of the goods and chattels, lands and tenements of P. B. Shaw and of 379 shares of stock standing on the books of The United Water, Gas & Electric Company said shares being identified as follows:

20

Certificate No. 32 for 15 shares
Certificate No. 36 for 5 shares
Certificate No. 37 for 10 shares
Certificate No. 44 for 100 shares
Certificate No. 45 for 100 shares
Certificate No. 46 for 50 shares
Certificate No. 47 for 50 shares
Certificate No. 48 for 49 shares

30

the property of P. B. Shaw, late of your County, yeoman of your bailiwick, you cause to be levied as well a certain debt of (\$93,693.94) with interest and costs, lawful money of Pennsylvania, which The Pennsylvania Company for Insurance on Lives and Granting Annuities to No. 23 Nov. Term, 1915, lately in our Court of Common Pleas of the County of Schuylkill, before our Judges at Pottsville, recovered against defendant as also \$93,693.94 with interest and costs as like money, which the said Plaintiff in our said Court were adjudged for its damages which

it sustained, as well by occasion of the detention of that debt as for its costs and charges by it in and about its suit in that behalf expended. And have you these moneys before the Judges at Pottsville, at our Court of Common Pleas, there to be held for the County of Schuylkill, on the first Monday of January next, to render the said plaintiff for its debt and damages aforesaid, whereof the said defendant is convict, as appears of record. And have you then and there this writ.

Witness the Honorable H. O. Bechtel, Esquire, at Pottsville, the 18th day of November, in the year of our Lord one thousand nine hundred and fifteen. 10

JOHN W. LEESE,
Prothonotary.

Levied on personal property of defendant as per schedule hereunto annexed, and after due advertisement according to law, sold the same Dec. 14th, 1915, for the sum of \$40.00, which was applied in part to payment of costs, and balance of costs paid by Pliff's Atty. Nulla Bona as to debt. 20

So Answers

CHARLES F. DITCHEY,
Sheriff.

COMMONWEALTH OF PENNSYLVANIA, } ss:
COUNTY OF SCHUYLKILL,

I, James R. Walton, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing writing is a full, true and correct copy of the whole record of the case therein stated, wherein Pennsylvania Company for Insurance on Lives and Granting Annuities is Plaintiff, and P. B. Shaw is Defendant, as the same remains of record and on file in said Court. 30

[SEAL]

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Pottsville, this 27th day June A. D. 1916.

JAMES R. WALTON,
Prothonotary.

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } ss:

10 I, James R. Walton, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing writing is a full, true and correct copy of the whole record
[SEAL] of the case therein stated, wherein Pennsylvania Company for Insurance on Lives and Granting Annuities is Plaintiff, and P. B. Shaw is Defendant, as the same remains of record and on file in said Court.

20 In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Pottsville, this 26th day of September A. D. 1916.

JAMES R. WALTON,
Prothonotary.

30 I, H. O. Bechtel, President Judge of the Twenty-first Judicial District, composed of the County of Schuylkill, do certify that James R. Walton, Prothonotary, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said County, was at the time of so doing and is now prothonotary, in and for said County of Schuylkill, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said

record, certificate, and attestation are in due form of law,
and made by the proper officer.

H. O. BECHTEL,
Judge.

COMMONWEALTH OF PENNSYLVANIA, } ss:
COUNTY OF SCHUYLKILL,

I, James R. Walton, Prothonotary of the Court of
Common Pleas in and for the said County, do certify that
the Honorable H. O. Bechtel, by whom the foregoing
attestation was made, and who has thereunto subscribed
his name, was at the time of making thereof and still is
President Judge of the Court of Common Pleas, and
Court of Quarter Sessions of the Peace in and for said
County, duly commissioned and qualified; to all whose
acts as such full faith and credit are and ought to be given,
as well in Courts of Judicature or elsewhere. 10

In testimony whereof, I have hereunto set my
hand and affixed the seal of said Court, this 20
[SEAL] twenty-sixth day of September A. D. 1916.

JAMES R. WALTON,
Prothonotary.

EXHIBIT D-5.

Includes signatures of Marion G. Taylor and W. W. Hepburn (over this are the marks of eradication).

AGREEMENT made and concluded this _____ day of _____
A. D. 1915, by and between P. B. Shaw, of the City of Williamsport, and W. W. Hepburn, of the City of Philadelphia, parties of the first part, and John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, all of Tower City, Pennsylvania, parties of the second part, WITNESSETH:

WHEREAS, the parties of the first part own or control 380 shares of the capital stock of the United Water, Gas and Electric Company, a corporation of the State of New Jersey, which the parties of the second part have agreed to purchase upon the terms and conditions hereinafter stated.

NOW THIS AGREEMENT WITNESSETH:

1. The parties of the first part agree to sell and deliver to the parties of the second part 380 shares of the capital stock of the United Water, Gas and Electric Company for the price or sum of eight thousand seven hundred dollars (\$8,700.00) or a proportionate part of the eight thousand seven hundred dollars (\$8,700.00) for the delivery of but 355 shares of said company.
2. The said consideration for the said stock is to be paid to the parties of the first part out of the moneys to be received through the proposed sale by the parties of the second part of the capital stock of the Sterling Consolidated Electric Company and at the time of the final settlement for said stock.
3. It is expressly understood and agreed that upon

payment of the consideration to the parties of the first part for the stock of the said United Water, Gas and Electric Company, that all suits now pending, whether at law or in equity, in the State of Pennsylvania and the State of New Jersey in which the parties of the first part, or either of them, are plaintiffs, and in which the parties of the second part and the Sterling Consolidated Electric Company, or any of them, are defendants, are to be marked of record settled, discontinued and ended; and all suits now pending in which the parties of the second part, or any of them, or the Sterling Consolidated Electric Company, are plaintiffs, and the parties of the first part, or either of them, are defendants, shall be marked of record settled, discontinued and ended. The settlement and satisfaction of the various cases herein referred to is to be made at the proper costs and charges of the parties plaintiff therein. 10

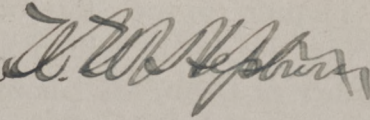
4. IT IS FURTHER AGREED that the said P. B. Shaw shall execute and deliver to the parties of the second part a release of all claims which he now has or may have up to the time of the payment of the above mentioned consideration money, as against the parties of the second part, or any of them, or against the Sterling Consolidated Electric Company, the Williams Valley Water Company, the United Water, Gas and Electric Company, and the Williams Valley Light, Heat and Power Company. 20

5. IT IS AGREED that the note of P. B. Shaw to the order of the parties of the second part, dated January 3, 1914, for ten thousand dollars (\$10,000) shall be returned to the said P. B. Shaw at the time of the payment of the above mentioned consideration money and the performance of the stipulations and undertakings herein mentioned on the part of the parties of the first part to be done and performed. 30

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

WITNESS:

MARION G. TAYLOR



[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

10

EXHIBIT D-6.

This exhibit is letter from W. W. Hepburn to Harper T. Bressler, dated May 13, 1915, read into the record and appearing on page 147 of this State of the Case.

20

EXHIBIT D-7.

This exhibit is letter from W. W. Hepburn to Harper T. Bressler, dated May 21, 1915, read into the record and appearing on page 149 of this State of the Case.

30

EXHIBIT D-8.

This exhibit is letter from W. W. Hepburn to Harper T. Bressler, dated June 21, 1915, read into the record and appearing on page 151 of this State of the Case.

EXHIBIT D-9.

EXEMPLIFICATION.

PHILADELPHIA COUNTY, }
 STATE OF PENNSYLVANIA, } SCT.

Among the Records and Proceedings of the Court of
 Common Pleas, No. 3, for the county of Philadelphia,
 State of Pennsylvania, the following may be found as
 matter of file and record at No. 318, June Term, 1915, 10
 to wit:

DOCKET ENTRIES.

June Term, 1915.

J. G. Johnson.
 318.

J. G. Johnson for Pennsylvania Co. for Ins. on Lives
 and Granting Annuities.

Sept. 13, 1915. 20

Penna. Co. for Insurance on Lives and Granting
 Annuities,

vs.

P. B. Shaw.

June 8, 1915. Statement and notice to file a Plea and
 Afft. of Defence filed.

July 13, 1915. Afft. of service of statement and no-
 tice to file a plea and an Afft of Defence on June 19, 1915.

Sept. 10, 1915. Att. Sur. Judgt. vs. The Pennsylvania 30
 Company for Insurance on Lives and Granting Annuities,
 Garnishee of funds on credits in name of Jane Shaw
 Hepburn, Exit.

Ret. 3 Mon., Sept., 1915.

Attached as commanded and made known to Penna.
 Co., Gar., Sept. 10, 1915, and to P. B. Shaw Sept. 13,
 1915.

Sums. Asspt.

Exit May 24, 1915.

Ret. 1, Mon., June, 1915.

Served June 4, 1915.

July 13, 1915. Judgment for want of an Afft. of Defence and a Plea.

Eo Die Dams. assd. at \$93,693.94.

COURT OF COMMON PLEAS No. 3.

10

JUNE TERM, 1915. No. 318.

THE PENNSYLVANIA COMPANY
FOR INSURANCE ON LIVES AND
GRANTING ANNUITIES,

vs.

P. B. SHAW.

20 Issue summons assumpsit as above. Returnable the
1st Monday of June, 1915. Sec. Leg.

MAURICE BOWER SAUL,
JOHN G. JOHNSON.

Per M. B. SAUL,
Atty. for Plaintiff.

SUMMONS

30 [SEAL.] The Commonwealth of Pennsylvania, to
the Sheriff of the county of Philadelphia,
Greeting:

COUNTY OF PHILADELPHIA, SS.

We command you that you summon P. B. Shaw, late
of your county, so that he be and appear before our
Judges, at Philadelphia, at our Court of Common Pleas,
No. 3, of the county of Philadelphia, to be holden at
Philadelphia, in and for the said county, on the first Mon-
day of June next, there to answer Pennsylvania Company

for Insurance on Lives and Granting Annuities of a plea of assumpsit. And to have you then and there this writ.

Witness the Honorable CHARLES B. McMICHAEL,
President of our said Court, at Philadelphia, the 24th
day of May, in the year of our Lord one thousand nine
hundred and fifteen.

SOLOMON RAINS,
Pro Prothonotary.

Served P. B. Shaw, the within named defendant, by
handing personally June 4, 1915, a true and attested copy
of the within writ at Pennsylvania Bldg., Fifteenth and 10
Chestnut streets, in the county of Philadelphia, State of
Pennsylvania, the place of business of said defendant, to
W. W. Hepburn, the person for the time being in charge
thereof, being unable to ascertain the residence of said
defendant within the county, upon inquiry at said place
of business.

So answers

JOHN MCKINNEY,
Deputy Sheriff.

A. LINCOLN ACKER,
Sheriff. 20

C. P. No. 3.

JUNE TERM, 1915. No. 318.

THE PENNSYLVANIA COMPANY
FOR INSURANCE ON LIVES AND
GRANTING ANNUITIES,

vs.

P. B. SHAW.

30

STATEMENT OF PLAINTIFF'S DEMAND.

I. The plaintiff above name, The Pennsylvania Com-
pany for Insurance on Lives and Granting Annuities,
claims of the defendant, P. B. Shaw, the sum of \$90,-

127.20, with interest on \$100,000 from June 24, 1912, to December 31, 1914; on \$95,063.60, from January 1, 1915, to May 20, 1915, and on \$90,127.20, from May 21, 1915, on, at the rate of 5½ per cent. per annum, subject to a credit of \$13,025.00, paid from time to time by the said P. B. Shaw on account of interest as hereinafter set forth, all of which is justly due and payable by the defendant to plaintiff upon a cause of action, as follows:

- 10 2. The defendant, on June 24, 1912, at Philadelphia, made his certain promissory note for \$100,000, payable on demand, and for value delivered the same to the plaintiff. Annexed hereto, marked Exhibit A, is a copy of said note. The endorsements on the back of the note, showing the amount paid on account, were placed upon the note after the execution thereof by the defendant.

3. Interest was paid from time to time by the defendant, in all amounting to \$13,025.00, as follows:

20	October 1, 1912.....	\$1,516.67
	January 4, 1913.....	1,533.33
	July 7, 1913.....	2,500.00
	January 17, 1914.....	2,475.00
	July 16, 1914.....	2,500.00
	January 13, 1915.....	2,500.00

4. The said note not having been paid after demand, the plaintiff sold at public auction \$100,000 Penna. Marble and Granite 1st 6's, and \$100,000 United Water, Gas and Electric Co. 5's, held as collateral security for the payment of the note. The \$100,000 Penna. Marble and Granite 1st 6's, held by plaintiff in accordance with the terms of the note as collateral security, were sold at public auction on the 30th day of December, 1914, and plaintiff received, on December 31, 1914, as the proceeds of said sale, the sum of \$4,936.40. The \$100,000 United Water, Gas and Electric Co. 5's, held by plain-
- 30

tiff in accordance with the terms of the note as collateral security, were sold at public auction on the 19th day of May, 1915, and plaintiff received on May 20, 1915, as the proceeds of the sale, \$4,936.40.

5. Demand has been fully made of the defendant for the amount due upon said note, but he has failed and refused to pay the amount due, or any part thereof. The said note is still in the possession and ownership of the plaintiff.

6. Plaintiff therefore claims of defendant the sum of 10 \$90,127.20, with interest as aforesaid.

MAURICE BOWER SAUL,
JOHN G. JOHNSON,
M. B. S.
Attorneys for Plaintiff.

STATE OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss. 20

C. S. W. PACKARD, being duly sworn according to law, deposes and says that he is President of The Pennsylvania Company for Insurance on Lives and Granting Annuities, plaintiff in the above entitled cause, and that the facts set forth in the foregoing statement of plaintiff's demand are true to the best of his knowledge, information and belief.

C. S. W. PACKARD.

Sworn to and subscribed before me this seventh day 30
of June, 1915.

(I am not a stockholder, director or officer of within mentioned corporation).

B. B. LYONS,
Notary Public.

(Seal.)

Commission expires Feb. 21, 1919.

EXHIBIT A.

(Copy).

\$100,000

Philadelphia, June 24, 1912.

I have this day borrowed and received from

THE PENNSYLVANIA COMPANY
for Insurances on Lives and Granting Annuities,

10 One hundred thousand Dollars,
which promise to repay at its office in the City of
Philadelphia, in gold, with interest thereon at 5½ per
cent. per annum on demand; having deposited as
collateral security for the payment of this liability, and
also as collateral for the payment of any other liability
or liabilities to the holder hereof, due, or to become due,
or which may be hereafter contracted, the following
property, viz:

- \$100,000 Penna. Marble and Granite Co. 1/6.
- \$100,000 United Water, Gas and Electric, 1/5.

20
.....
.....
with full power and authority to the holder in case of
default in payment of said liabilities, or any of them,
to sell, assign and deliver the whole or any part of the
above securities or any substitutes therefor, or additions
thereto, at any Broker's Board or at public or private
sale, at the option of such holder, at any time or times
thereafter without advertisement or notice to the under-
30 signed, and with the right on the part of the holder
hereof to become the purchaser thereof at such sale or
sales absolutely freed and discharged from any equity
of redemption and of all trusts and claims whatsoever,
and after deducting all legal and other costs and ex-
penses for collection, sale and delivery, to apply the
residue of the proceeds of such sale or sales so made
to pay any, either or all of such liabilities as said holder

hereof shall deem proper, return the overplus to the undersigned; and any deficiency resulting from the sale of said securities hereby promise to pay forthwith after such sale, together with interest thereon.

The holder hereof shall have the right, from time to time, under the conditions hereafter stated, to demand additional collateral security for the payment hereof, and if said demand is not complied with according to its terms, this obligation shall forthwith become due.

The holder hereof shall also have the right to receive from the maker hereof other securities in exchange for those above mentioned; and shall likewise have full power and authority to pledge the foregoing securities, or any others that may be received under the terms hereof. 10

It is expressly agreed that additions to, reductions of, or substitutes for, all or any of the collateral securities above named and payments on account of said loan or increase of the same, or other loans made partially or wholly upon the said collateral may from time to time be made with consent of the holder hereof, without affecting or impairing in any manner the validity of this contract, all such securities added or substituted being held with the same effect as if they had been herein originally pledged. also agree that so often as the market price of these or subsequently deposited securities shall, before payment hereof, fall to a price insufficient to cover the obligations of the undersigned to the holder hereof together with per cent. margin added thereto, will on demand within two hours thereafter deposit with the holder additional security to be approved by said holder, sufficient to cover said amount and margin; and that in default thereof this obligation shall become instantly due and payable as though it had actually matured and all the foregoing rights to sell and transfer collaterals 20 30

shall at once be exercisable at risk in case of any deficiency in realizing proceeds.

P. B. SHAW.

Int. from 6-22.

10	THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, vs. P. B. SHAW.	}	C. P. No. 3. JUNE TERM, 1915. No. 318.
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PROOF OF SERVICE OF STATEMENT OF CLAIM AND RULE TO FILE PLEAS AND AFFIDAVIT OF DEFENCE.

PHILADELPHIA COUNTY, SS:

20 Charles J. McDermott being duly sworn says, that on the ninth day of June, 1915, he served a statement of claim and notice of rule to file pleas and affidavit of defence upon P. B. Shaw, the defendant in the above entitled cause, to this deponent personally known, by delivering to the said P. B. Shaw a true copy thereof at the office of the Pennsylvania Marble and Granite Company in the Pennsylvania Building, 15th and Chestnut Streets, Philadelphia.

30 Sworn to and subscribed before me this 13th day of July, A. D. 1915. CHARLES J. McDERMOTT.

[SEAL] JOHN THIEL,
Notary Public.

My Commission expires on the 23rd day of January, 1919.

THE PENNSYLVANIA COMPANY
 FOR INSURANCE ON LIVES AND
 GRANTING ANNUITIES,

vs.

P. B. SHAW.

C. P. No. 3.
 JUNE TERM, 1915.
 No. 318.

ORDER FOR JUDGMENT AND ASSESSMENT OF DAMAGES.

The Prothonotary will enter judgment in the above 10
 entitled cause in favor of the plaintiff and against the de-
 fendant for want of an affidavit of defence and pleas and
 will assess the damages thereon as follows:

Balance of Principal of Loan.....	\$90,127 20	
Interest at 5½ per cent. on \$100,000 from June 24, 1912, to December 31, 1914..	13,856 94	
Interest at 5½ per cent. on \$95,063.60 from January 1, 1915, to May 20, 1915....	2,018 79	
Interest at 5½ per cent. on \$90,127.20 from May 21, 1915, to July 13, 1915.....	716 01	20
	<hr/>	
Total	\$106,718 94	
Less credits for payments on account of in- terest as set forth in the plaintiff's statement	13,025 00	
	<hr/>	
Amount for which judgment is as- sessed	\$93,693 94	30

To Prothonotary C. P.
 July 13, 1915.

JOHN G. JOHNSON,
 Attorney for Plaintiff.
 per J. W. Bayard.

I assess damages as above.

July 13, 1915.

R. F. CLAY,
 Pro Prothonotary.

THE PENNSYLVANIA COMPANY
FOR INSURANCE ON LIVES AND
GRANTING ANNUITIES,

vs.

10 P. B. SHAW, DEFENDANT, AND
THE PENNSYLVANIA COMPANY
FOR INSURANCES ON LIVES AND
GRANTING ANNUITIES, GAR-
NISHEE OF FUNDS OR CREDITS
IN THE NAME OF JANE SHAW
HEPBURN.

C. P. No. 3.
JUNE TERM, 1915.
No. 318.

Issue attachment execution as above. Returnable the
3d Monday of September, 1915. sec. leg.

September 10th, 1915.

JOHN G. JOHNSON,
per JOSEPH N. EWING,
Atty. for Plff.

20

ATTACHMENT SUR JUDGMENT.

COUNTY OF PHILADELPHIA, SS.

The Commonwealth of Pennsylvania. To
[SEAL] the Sheriff of the County of Philadelphia,
Greeting:

30 We command you, that you levy upon and attach the
goods and chattels, stocks, moneys and interests of and
debts due to P. B. Shaw, defendant, in satisfaction of a
certain judgment, obtained in our Court of Common Pleas
No. 3 of the County of Philadelphia, at the suit of The
Pennsylvania Company for Insurance on Lives and
Granting Annuities, plaintiff, against the said defendant,
of June Term, 1915, No. 318, for the sum of ninety-three
thousand six hundred and ninety-three dollars and ninety-

four cents with interest from the thirteenth day of July, 1915, and costs.

And also, that by honest and lawful men of your bailiwick, you make known to the said defendant and to The Pennsylvania Company for Insurance on Lives and Granting Annuities garnishing funds or credits in name of Jane Shaw Hepburn and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest and debts, or any of them, may be attached, as garnishees, that they be and appear before our said Court at Philadelphia, on the third Monday of September inst., to show if anything they, the said defendant or the said garnishees, have to say, why the said judgment, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishees. And have you then and there this writ.

10

Witness the Honorable CHARLES B. McMICHAEL, President Judge of our said Court, at Philadelphia, the tenth day of September, in the year of our Lord one thousand nine hundred and fifteen.

SOLOMON RAINS,
Pro Prothonotary.

20

Attached as within commanded and made known to The Pennsylvania Company for Insurances on Lives and Granting Annuities, Garnishee, by handing personally, September 10, 1915, at 3 o'clock 30 minutes P. M., a true and attested copy of the within writ, to C. S. Newhall, the Treasurer of said Company, Garnishee, in the County of Philadelphia, State of Pennsylvania, and making known to him the contents thereof, and made known to P. B. Shaw, the within named defendant Company, by handing personally September 13th, 1915, a true and attested copy of the within writ at 1415 Pennsylvania Building, in the County of Philadelphia, State of Pennsylvania, the place of business of said defendant Company, to G. Parkman, the person for the time being in charge thereof,

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being unable to ascertain the residence of any of the Officers of said defendant Company within the County, upon inquiry at said place of business.

So answers

GEORGE H. RAHN,
Deputy Sheriff.

A. LINCOLN ACKER,
Sheriff.

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COURT OF COMMON PLEAS No. 3.

JUNE TERM, 1913. No. 318.

THE PENNSYLVANIA COMPANY
FOR INSURANCES ON LIVES AND
GRANTING ANNUITIES,

vs.

20 P. B. SHAW, Defendant,
and

THE PENNSYLVANIA COMPANY
FOR INSURANCES ON LIVES AND
GRANTING ANNUITIES.

Enter my appearance for The Pennsylvania Company for Insurances on Lives and Granting Annuities, Garnishee in the above case. Sept. 13, 1915.

30

JOHN G. JOHNSON,
Per JOSEPH N. EWING,
Atty. for Defendant.

JUDGMENT ROLL.

Whereupon it was considered by our said Court before our said Judges that Penna. Co. for Insurances on Lives and Granting Annuities, the plaintiff herein, re-

cover of P. B. Shaw, the defendant herein, the sum of ninety-three thousand six hundred and ninety-three 94-100 dollars, lawful money, for their judgment, and also the further sum of thirty-two 47-100 dollars, like money, for their costs and charges by them about their suit in that behalf expended, whereof the aforesaid defendant is convict as appears of record, &c.

And the defendant in mercy, &c.

JUDGMENT INDEX.

Defendant—P. B. Shaw. 10
 Plaintiff—Penna. Co. for Insurances on Lives and
 Granting Annuities.
 Court—3.
 Term—1915, June.
 No.—318.
 Attorney—Johnson.
 Date—1915, July 13.
 Amount—\$93,693.94.

COSTS. 20

Philadelphia County	\$32 47
Exemplification	6 50

FOREIGN CERTIFICATE.

THE COMMONWEALTH OF PENNSYLVANIA.

COUNTY OF PHILADELPHIA, SS.

I, HENRY F. WALTON, ESQUIRE, Prothonotary of the Courts of Common Pleas of the county of Philadelphia, do certify that the foregoing is a true copy of the whole record of the cause wherein Penna. Co. for Insurances on Lives and Granting Annuities, plaintiff, and P. B. Shaw, defendant, of June Term, 1915, Number 318, as full, entire and complete as the same remains on file in Court of Common Pleas, No. 3, of the county of Philadelphia aforesaid, in the case above stated. 30

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts, this 24th day of June, in the year of our Lord one thousand nine hundred and sixteen (1916).

HENRY F. WALTON,
Prothonotary.

[SEAL.]

COUNTY OF PHILADELPHIA, SS.

10 I, CHARLES B. McMICHAEL, Presiding Judge of the Court of Common Pleas, No. 3, for the county of Philadelphia, do certify that the foregoing record, certificate and attestation made by Henry F. Walton, Esquire, Prothonotary of the said Court, whose name is thereunto subscribed, and the seal of the said Court affixed, are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand this 24th day of June, in the year of our Lord one thousand nine hundred and sixteen (1916).

20 CHARLES B. McMICHAEL,
President Judge, Court of Common Pleas No. 3.

COUNTY OF PHILADELPHIA, SS.

30 I, HENRY F. WALTON, ESQUIRE, Prothonotary of the Courts of Common Pleas of the county of Philadelphia, do certify that the Honorable Charles B. McMichael, by whom the foregoing certificate and attestation were made, and whose name is thereto subscribed, was at the time of making thereof and still is, Presiding Judge of the Court of Common Pleas, No. 3, of the county of Philadelphia, duly commissioned and sworn; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts, this 24th day of June, in the year of our Lord one thousand nine hundred and sixteen (1916).

HENRY F. WALTON,
Prothonotary.

[SEAL.]

(Filed October 19, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN		
JANE SHAW HEPBURN,	}	ON BILL, ETC.
Complainant,		FINAL HEARING. 10
AND		CONCLUSIONS.
UNITED WATER, GAS & ELECTRIC	}	
COMPANY, ET ALS.,		
Defendants.		

BLEAKLY & STOCKWELL, with whom was associated CHARLES J. HEPBURN, of the Philadelphia Bar, for complainant.

GREY & ARCHER and LEWIS STARR, with whom was associated Maurice Bower Saul, of the Philadelphia Bar, for defendants. 20

LEAMING, V. C. (Orally) :

I am unable to entertain a doubt touching the disposition that should be made of this case.

The primary question is whether or not this stock was transferred by Mr. Shaw to Mrs. Hepburn in good faith and for valuable consideration at the time claimed. I would have been better satisfied in this case if Mr. Shaw had been present and testified touching these various transactions, but it is impossible to give substantial weight to an adverse inference by reason of his absence. If this stock was in fact transferred in good faith by Mr. Shaw to his daughter for valuable consideration, as is claimed, he could not at this time in any way derogate the title of his daughter, but his testimony would be enlightening and of great value, 30

whether his attitude may at this time be friendly to her or hostile.

10 There can be no doubt, I think, in the mind of any one, that Mr. Shaw was indebted to his daughter. No one could well question the fact that he owed her \$35,000, even had he testified to the contrary, in view of the circumstances that upon his own books there is an account in recognition of that indebtedness. So we can proceed, in any event, upon the assumption and with the fixed belief that he was honestly indebted to his daughter in an amount far in excess of the value of these certificates which are here in question. It matters not that Mr. Shaw had originally laid the foundation for or contributed to the fortune which she had, if he in fact subsequently borrowed from her. The fact that he borrowed \$35,000 from his daughter is not only declared against him by his books, but is fully established by the testimony of the other witnesses familiar with the transactions. It follows that, owing her this money, it was his privilege, under the law of this State, to prefer her as a creditor, however 20 much he may have been involved in his financial matters; even though he was at the time insolvent, it was his privilege to pay to his daughter a debt which he honestly owed her, if he saw fit to do so, and in that matter constitute her a preferred creditor. He had like power, if he saw fit, to give her this stock by way of security for the money which he owed her.

30 It seemed to me at one time, in listening to the testimony, that the transfer of this stock from Mr. Shaw to his daughter might have been, in legal contemplation, by way of suretyship, rather than as an absolute transfer for payment, as there appears to have been no definite amount of credit agreed upon; but I am not at all sure that that is so.

Mr. Hepburn has testified positively and unequivocally that the assignment of this stock was signed

by Mr. Shaw in his presence and witnessed by him in May, 1915, and that the stock certificates, so transferred, were at the same time delivered to him by Mr. Shaw for Mrs. Hepburn on account of the then existing indebtedness of Mr. Shaw to Mrs. Hepburn. If we are to doubt that this stock was transferred in that manner and at that time, as testified to by Mr. Hepburn, and for the purposes which he has testified, we are obliged to convict him in our minds of wilful and deliberate perjury. So, too, if we are to entertain a doubt that in January preceding, Mr. Shaw promised to do what Mr. Hepburn says he did in May, we are likewise to convict Mrs. Hepburn of deliberate perjury, for she has said positively and unequivocally that in January her father promised to turn this stock over to her. 10

It is undoubtedly true that in the subsequent negotiations of Mr. Hepburn touching the sale of this stock he dealt with it in a manner that in some respects indicated that it really belonged to his father-in-law; but we must weigh those transactions in the light of the negotiations that were then pending. It is not reasonable, under the circumstances then existing, to suppose that Mr. Hepburn would have found it necessary at every, or even any stage of the proceedings he was conducting, to be careful to declare that this stock was the property of his wife or that it had been transferred to her, although not in her name upon the books of the stock company. Had he observed special care to make altogether unnecessary declarations of that kind it would have created more suspicion in my mind and would have been the source of more patent suggestion of some understanding of an improper nature between him and his father-in-law, with a view of avoiding creditors of his father-in-law, than the transactions which did transpire suggest. A careless attitude not infrequently suggests innocence of purpose. He 20 30

knew, as has been shown, that at that time his father-in-law was pecuniarily embarrassed. The circumstance that he did not carefully guard against any conduct or statement, indicating that this stock still belonged to his father-in-law, indicates quite as fully his condition of mental security in his own then unchallenged position as a man who knew that the stock had been delivered to him for his wife in payment of a debt, as it indicates that the transaction may not have been of that nature.

- 10 In a great number of suits of various kinds that have been tried before me where conveyances or transfers have been made, and an attack upon their bona fides has been pending under a claim that they were only simulated, I have almost uniformly observed that the careful and studied conduct of a fraudulent grantor or grantee to avoid doing anything or saying anything that could by any possibility be urged as an indication of the want of bona fides in the transfer, is one of the most powerful badges of fraud that exists. It more frequently occurs that the failure to protect oneself and to guard against a future claim of want of bona fides is evidence of good faith.

- Now, without going into the details of the testimony of the case or discussing in detail its different aspects, I can say nothing that is really more forceful than to merely state that I fully believe that Mr. and Mrs. Hepburn have told the truth upon the witness stand. I believe that this money was due to her; that in January, or thereabouts, her father promised to turn this stock over to her in payment of the debt, or as a security, or for her protection, and that later, in May, he did turn it over for that purpose, in the manner testified to by Mr. Hepburn. I cannot believe that either of those two witnesses have testified falsely, and if that is true, as I believe it is, there remains no doubt touching the disposition that a court is bound to make

of this case. The stock then became the property of Mrs. Hepburn, and nothing that transpired after that, either by the conduct of Mr. Shaw or by that of his creditors, could in any way militate against her title. As owner of the stock she became entitled and is now entitled to have it transferred upon the books of the company that issued it, and a decree will be advised directing the officers of that company to transfer upon its books in the usual and customary manner these certificates of stock so that they may be placed in the name of Mrs. Hepburn. 10

If counsel will prepare a decree of that nature and submit it to the adversary, to see whether there is any objection to its form, I will advise it.

Submitted and determined, October 17, 1916.

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(Filed October 20, 1916.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

JANE SHAW HEPBURN,
Complainant,

AND

10 UNITED WATER, GAS & ELECTRIC
COMPANY, PENNSYLVANIA COM-
PANY FOR INSURANCE ON LIVES
AND GRANTING ANNUITIES,
PHILIP B. SHAW, JOHN PFEIF-
FER, G. SCHOFFSTALL, HARPER
T. BRESSLER, W. N. SNYDER, B.
W. FEES AND CHRISTIANE
LONG,

20

Defendants.

ON BILL, &c.

FINAL DECREE.

30 This cause coming on to be heard in the presence of Bleakly & Stockwell and C. J. Hepburn, Esquire, of the Philadelphia Bar, counsel for the complainant, and Messrs. Grey & Archer, and Maurice Bower Saul, Esquire, of the Philadelphia Bar, counsel for the defendant, Pennsylvania Company for Insurance on Lives and Granting Annuities, and Lewis Starr, Esquire, counsel for the defendant, United Water, Gas & Electric Company, and defendants John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, and the Court having read and considered the bill of complaint and the answers of the several defendants and the counter-claims of the Pennsylvania Company for Insurance on Lives and Granting Annuities, and no answer having been filed on behalf of Philip B. Shaw and no

one appearing on his behalf, and having heard and considered the testimony on behalf of the respective parties and the arguments of counsel, and it appearing to the satisfaction of the Court that the complainant, Jane Shaw Hepburn, in the month of May, 1915, became the owner, by lawful assignment, of 349 shares of the capital stock of the United Water, Gas & Electric Company, represented by certificates No. 44, for 100 shares, No. 45, for 100 shares, No. 46, for 50 shares, No. 47, for 50 shares, and No. 48, for 49 shares, theretofore issued to and then standing in the name of P. B. Shaw on the books of the said corporation, and that in the month of June, 1915, she became the owner, by lawful assignment, of an additional one share of stock in said Company, represented by certificate No. 39, theretofore issued to and then standing in the name of Lewis Starr on the books of said corporation; and that on the 29th day of October, 1915, and before the filing of her bill of complaint, the complainant made demand upon the said United Water, Gas & Electric Company for the transfer to her on the books of the said corporation of the said shares of stock and issue to her new certificates for said shares to take the place of said old certificates, and that the defendant, United Water, Gas & Electric Company, refused to comply with said demand; and it satisfactorily appearing to the Court that the said defendants have no right, title or interest in said stock and that the complainant is entitled to have transferred to her own name on the books of the said United Water, Gas & Electric Company the said 350 shares of stock and to have issued to her, in her own name, certificates therefor:

It is thereupon, on this 17th day of October, 1916, on motion of Bleakly & Stockwell, counsel for the complainant, ordered, adjudged and decreed that the complainant was, on October 29, 1915, and still remains the owner of the said 350 shares of stock in said United Water, Gas & Electric Company, and that the United Water, Gas &

Electric Company be, and it is hereby enjoined from transferring on its books the said shares of stock, or any of them, to the defendant, the Pennsylvania Company for Insurance on Lives and Granting Annuities, or to any other person save the complainant, on its books, the said 350 shares of stock represented by the certificates hereinabove mentioned and is hereby ordered to issue to the complainant the certificates for said 350 shares of stock, and that the defendants pay to the complainant the costs in this suit to be taxed.

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Respectfully advised,

E. R. WALKER,

C.

E. B. LEAMING,

V. C.

The foregoing decree is hereby approved as to form.

GREY & ARCHER,

Solicitors for Pennsylvania Company for Insurance on Lives and Granting Annuities, Defendant.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JANE SHAW HEPBURN,
Complainant-Respondent,
and

UNITED WATER, GAS & ELECTRIC
COMPANY PHILIP B. SHAW,
JOHN PFEIFFER, G. SCHOFF-
STALL, HARPER T. BRESSLER,
W. N. SNYDER, B. W. FEES
and CHRISTIANE LONG,
Defendants-Respondents,

and

THE PENNSYLVANIA COMPANY
FOR INSURANCES ON LIVES AND
GRANTING ANNUITIES,
Defendant-Appellant.

ON APPEAL FROM
COURT OF
CHANCERY.

BRIEF FOR DEFENDANT-APPELLANT.

THE PLEADINGS.

The parties are: (1) Jane Shaw Hepburn, complain-
ant-respondent; (2) The Water, Gas & Electric Com-
pany, a corporation of the State of New Jersey, defend-

United

ant-respondent; (3) Philip B. Shaw, defendant-respondent; (4) John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, defendants-respondents, and (5) The Pennsylvania Company for Insurances on Lives and Granting Annuities, a corporation of the State of Pennsylvania, defendant-appellant.

Complainant, a resident of the State of Pennsylvania, filed her bill against United Water, Gas & Electric Company, a corporation of New Jersey, seeking to compel it to transfer to her on the books of the company 349 shares of stock thereof, issued to and standing in the name of Philip B. Shaw and represented by five certificates of stock, and one share of stock standing in the name of Lewis Starr, making a total of 350 shares.

The one share of stock standing in the name of Lewis Starr is not involved in this appeal; the defendant, The Pennsylvania Company for Insurances on Lives and Granting Annuities making no claim thereto.

The Pennsylvania Company for Insurances on Lives and Granting Annuities is made a party to said bill by reason of the fact that on July 13, 1915, it recovered a judgment in Common Pleas Court, No. 3, Philadelphia county, against said Philip B. Shaw for the sum of \$93,693.94, and on October 19th, 1915, issued a writ of attachment out of the Court of Common Pleas of Schuylkill county against said Philip B. Shaw, defendant-respondent, and against United Water, Gas & Electric Company, Garnishees; as a result of proceedings thereunder it seized and sold 379 shares of stock of said United Water, Gas & Electric Company standing on the books of said company in the name of Philip B. Shaw,

of which stock the 349 shares involved in this controversy forms a part.

Having caused said stock to be seized and sold under said attachment and having purchased the same at the Sheriff's sale, demand was made by The Pennsylvania Company, appellant, on the United Company for a certificate of stock to be issued to it, representing said shares. Complainant-respondent claiming to have received said stock for a valuable consideration from the said Philip B. Shaw, prior to the date of said attachment, likewise made demand on the said United Water, Gas & Electric Company for the transfer to her of said stock. Both said demands for transfer were refused by said United Water, Gas & Electric Company and the bill in this matter was thereafter filed claiming that complainant was the legal owner of said shares; that the proceedings instituted in the State of Pennsylvania and the sale of said stock thereunder were unlawful and that the said The Pennsylvania Company for Insurances on Lives and Granting Annuities had no interest therein and praying for a decree directing the said United Water, Gas & Electric Company to transfer said stock to the complainant.

The bill also alleges that The Pennsylvania Company for Insurances on Lives and Granting Annuities, having in its possession the sum of \$8,700.00, representing the proceeds of sale of said stock, abused its so-called trust by the institution of said attachment proceedings, and that the said attachment proceedings, as against the complainant, were inequitable, fraudulent and in bad faith, but this point was not considered by the Vice-Chancellor in deciding the case.

Upon application to the Court, an order was made directing that complainant's bill be amended so as to bring

in as additional defendants Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long.

Philip B. Shaw, in whose name the said stock stood, entered his appearance to the bill, but filed no answer and took no part in the trial.

Defendant-respondent, United Water, Gas & Electric Company, filed an answer, in substance tendering itself willing to perform any decree made by the Court with respect to the transfer of said shares of stock.

Defendant-appellant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, filed an answer and counter-claim against the complainant, denying that complainant was the owner of said stock, asserting Shaw's ownership thereof, and that a certain agreement entered into with respect to the sale thereof was for the benefit of the said Shaw. It denies that the attachment proceedings against Shaw were inequitable, fraudulent or in bad faith, and asserts that the said proceedings were regular and that by means thereof it secured title to said shares of stock and is entitled to have said stock transferred to it.

Said answer and counter-claim also set out that the defendant-appellant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, had filed in the Court of Schuylkill county (where said attachment proceedings were instituted) its bill against said United Water, Gas & Electric Company and the said Jane Shaw Hepburn, setting forth the facts with respect to said cause of action and seeking a decree of said Court against the said Jane Shaw Hepburn, complainant in this cause, to surrender to said United Water, Gas & Electric Com-

pany, for cancellation, such stock certificates as were under her control and for a decree determining that the title to said stock is in said The Pennsylvania Company for Insurances on Lives and Granting Annuities, and directing said company to issue certificates therefor to this defendant-appellant.

Defendant-appellant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, also filed a counter-claim against the defendants, Philip B. Shaw, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long (parties brought in by order of the Court), setting out substantially the same facts as in the answer and counter-claim against the complainant and likewise asking for a decree that it, The Pennsylvania Company for Insurances on Lives and Granting Annuities, is the owner of said stock standing in the name of Philip B. Shaw.

Defendants-respondents, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long, filed their answer asserting that if it should be determined that the said stock belongs to defendant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, then there should be returned to said defendants the sum of \$8,700.00 deposited with the said The Pennsylvania Company for Insurances on Lives and Granting Annuities for the purchase price of said stock.

Complainant filed a replication and answer to the counter-claim denying the claim of said The Pennsylvania Company for Insurances on Lives and Granting Annuities to the stock and disputing the jurisdiction of the Schuylkill County Court.

POINT I.

FACTS.

THE COURT ERRED IN FINDING ON THE FACTS THAT IN MAY, 1915, COMPLAINANT BECAME THE OWNER OF 349 SHARES OF STOCK OF UNITED WATER, GAS & ELECTRIC COMPANY BY VALID TRANSFER AND DELIVERY THEREOF FROM P. B. SHAW, THE RECORD OWNER OF SAID STOCK, AND SHOULD HAVE FOUND THAT SAID 349 SHARES OF STOCK OF UNITED WATER, GAS & ELECTRIC COMPANY WERE NOT DELIVERED TO COMPLAINANT IN MAY, 1915, BUT WERE THE PROPERTY OF SAID P. B. SHAW AND REMAINED HIS PROPERTY, AND THAT DEFENDANT-APPELLANT, THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES & GRANTING ANNUITIES, ACQUIRED TITLE THERETO BY REASON OF THE ATTACHMENT PROCEEDINGS INSTITUTED AGAINST SHAW IN SCHUYLKILL COUNTY COMMON PLEAS COURT.

United Water, Gas & Electric Company, a corporation of the State of New Jersey, on April 29th, 1910, issued to Philip B. Shaw the following certificates of stock:

- Certificate No. 44 for 100 shares;
- Certificate No. 45 for 100 shares;
- Certificate No. 46 for 50 shares;
- Certificate No. 47 for 50 shares;
- Certificate No. 48 for 49 shares

and said stock still stands in his name on said books. (See Exhibit C-1, p. 176 *et seq.*, and testimony, p. 151, l. 26; p. 152, l. 20.)

Complainant is the daughter of Philip B. Shaw. (P. 62, l. 13.)

The stock certificates remained in Shaw's possession, according to testimony offered by complainant, until shortly after May 14th, 1915 (p. 63, l. 5; p. 68, l. 22; p. 77, l. 13; p. 97, ll. 7-14; p. 108, l. 15), when the certificates were delivered to W. W. Hepburn, husband of complainant at W. W. Hepburn's office in Philadelphia. (P. 79, ll. 11-18.)

Complainant's testimony is to the effect that she had loaned to Philip B. Shaw, her father, certain securities, of a par value of about \$45,000 (p. 98, l. 12), a large part of which had been given to her by her father (p. 105, l. 33), the market or real value of which was not fixed definitely by the testimony (p. 63, ll. 15, 30), but \$10,000 of it was bonds of Pennsylvania Marble & Granite Co., which had been foreclosed (p. 98, l. 8), and \$35,000 of it was Pennsylvania Building Co. stock, which *had* been paying 8 per cent., and was "considered a very valuable stock" (p. 98, ll. 1-5), although no interest had been paid on the bonds since 1913 (p. 106, l. 18) and the stock had missed its dividends (p. 129, l. 6); that complainant had become anxious over her securities and had requested the return thereof, and that Shaw had told his daughter (complainant) that he had not been able to adjust some matters, but that he would give her some United Water, Gas & Electric Company stock on account of the balance, etc. (p. 63, l. 25; p. 96, l. 1, *et seq.*). This conversation and the subsequent transac-

tions are brought out more particularly in the testimony of W. W. Hepburn, at p. 95, l. 22, to and inc. p. 108.

A hearing involving some companies in which Shaw was interested was held at Harrisburg, Pennsylvania, on or about May 14th 1915 (p. 77, l. 12), and immediately thereafter the stock in question, complainant asserts, was delivered to W. W. Hepburn, acting for complainant.

Complainant contends that thereafter Shaw had no interest in said stock and was not to receive any part of the moneys realized from the sale thereof. (P. 89, l. 7, to and inc. p. 108) where W. W. Hepburn was examined at length by the Court.

Shaw had claims against the United Water, Gas & Electric Company and that company had claims against him, and such matters were being litigated. W. W. Hepburn endeavored to bring about a settlement of these differences and a sale of the property of the United Company. In order to do so, a draft of agreement was prepared and taken by W. W. Hepburn to Tower City, Pa., where the United Company's officers resided, which draft is Exhibit D-5, (p. 196). See also testimony (p. 83, l. 22; p. 143, l. 21; p. 145, l. 21). This agreement recited that Shaw and Hepburn *owned* or *controlled* the stock in question and *agreed to sell* said stock to the defendants, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long. This was signed "W. W. Hepburn" and his signature witnessed by "Marion G. Taylor," and the signature "W. W. Hepburn" has been crossed out. This draft of agreement was not further executed. Upon arriving at Tower City, W. W. Hepburn received a telephone call from Philip B. Shaw (p. 145, l. 31), as a result of which the

draft of agreement was re-framed and was incorporated in the two agreements of June 23rd, 1915, (Exhibit C-1, p. 16), and July 3rd, 1915, (D-5, p. 40), see p. 146 of testimony, l. 10.)

The defendants, John Pfeiffer, G. Schoffstall, Harper T. Bressler, W. N. Snyder, B. W. Fees and Christiane Long were prepared to pay \$8,700.00 for the stock, but the settlement could not be completed and the said fund of \$8,700.00 was delivered to The Pennsylvania Company for Insurances on Lives and Granting Annuities, under the terms set forth in a letter under date of September 10, 1915, and appearing at p. 18.

On July 13th, 1915, a judgment was entered against P. B. Shaw by The Pennsylvania Company for Insurances on Lives and Granting Annuities in Court of Common Pleas, No. 3, of Philadelphia county, Pennsylvania, for \$93,693.94 (p. 207). Thereafter the said judgment was taken to Schuylkill county and an attachment issued against the stock standing in the name of Philip B. Shaw on the books of the company and the stock sold by the Sheriff and purchased by said The Pennsylvania Company for Insurances on Lives and Granting Annuities. (Pp. 180-193; p. 46, l. 27.)

Complainant claims that by said proceedings The Pennsylvania Company for Insurances on Lives and Granting Annuities secures no title to the stock.

That the stock was issued to P. B. Shaw and remained in his possession at least until shortly after May 14th, 1915, seems to be established beyond doubt. The circumstances under which complainant contends Shaw parted with possession of said stock are here reviewed as follows:

Complainant claims that the stock was delivered to W. W. Hepburn for her on account of securities which she had theretofore delivered to her father; that her father had given her securities from time to time; that she would loan them to him from time to time; that such securities were allowed to remain in Shaw's name, but that she received the dividends or interest thereon; that early in the year 1915 she became anxious about the return of her securities; her father was unable to return said securities and stated that he had stock of the United Water, Gas & Electric Company which he would give her on account; that from time to time thereafter the subject was mentioned by W. W. Hepburn, acting for complainant, to the said Shaw, and that finally, in May, 1915, the said Philip B. Shaw delivered said stock to W. W. Hepburn, for complainant; that Shaw then parted with all control over and interest in said stock; that the unexecuted draft of agreement (p. 196) which would indicate that Shaw was interested in said stock was not executed because of advice given by Mr. McCormick, the attorney of Shaw, that he should not be a party to an agreement to sell stock which he did not own; that in the later negotiations leading to the sale of said stock, W. W. Hepburn informed the purchasers that the stock belonged to complainant (p. 95, l. 12), and that since January, 1915, complainant has considered herself as the owner of said stock and since shortly after May 14th, 1915, complainant has had actual possession of the certificates.

By these proofs complainant seeks to establish her title and ownership to said shares of stock.

As against said proofs, we have the following :

W. W. Hepburn himself took to Tower City a draft of an agreement (p. 196) in the latter part of June, 1915, and prior to the execution of the agreement of June 23rd, 1915 (p. 16). This was at least a month after this stock had been delivered to W. W. Hepburn by Shaw (accepting complainant's proofs for the moment) for the benefit of complainant, and while W. W. Hepburn retained possession of said certificates. W. W. Hepburn had signed that agreement which recited that P. B. Shaw and W. W. Hepburn, "parties of the first part, own or control 380 shares of the capital stock of United Water, Gas & Electric Company," being the stock in dispute, and agree to sell said stock.

During the course of the negotiations, W. W. Hepburn wrote on May 13, 1915, to Harper T. Bressler the letter shown on p. 147, referring to Mr. Shaw and the purchase of *his* (i. e. Shaw's) portion of the stock. (See page 147, l. 31.)

Thereafter, and on May 21, 1915, W. W. Hepburn again wrote Harper T. Bressler the letter shown on p. 149, in which he says: "It was on the question of getting at what was a fair price for *his* interest," etc., referring to Shaw's interest in the United Water, Gas & Electric Company. (See p. 149, l. 16.)

On June 21, 1915, which apparently was after the preparation of the agreement, Exhibit D-5, shown on p. 196, W. W. Hepburn wrote to Harper T. Bressler referring to said matter and stating that he had taken up "with Mr. Shaw the questions his attorneys had raised in Williamsport on the contract," etc., and that "there is no

change in the details, merely in the matter of executing them," etc., (p. 151, l. 9).

At no point in this series of letters is reference made to complainant's interest in said stock, and continuous reference is made to Shaw's interest in the stock in question.

Mr. Bressler's testimony with respect to this unexecuted draft of agreement (Exhibit D-5) is to the effect that when W. W. Hepburn was in Tower City, after a telephone call, Hepburn turned to the persons present and said: "That was Mr. Shaw at the other end; he objects to signing the agreement, or his attorney objects to having him sign the agreement in the shape that it is at present," (p. 145, l. 37, *et seq.*) and he (Hepburn) asked whether it would matter "if some one else agreed to deliver this stock instead of Mr. Shaw" (p. 146, l. 6). Thereafter the agreement was split into two parts (p. 146, l. 10) and the agreements of June 23rd and July 9th, 1915, were executed.

// Mr. Bressler states that they first learned of Mr. Hepburn's claim to the stock about June 23rd or 24th, 1915, when the written agreement came to them, signed by Mrs. Hepburn, being the agreement shown on page 16. (See Bressler's testimony, p. 141, l. 18; p. 143, l. 8, *et seq.*; p. 144, l. 44; p. 161, l. 8.)

// On September 8, 1915, a meeting of directors of United Water, Gas & Electric Company was held at Tower City. Shaw, acting as a director thereof, gave his written consent to the holding of said meeting, being in effect a waiver of notice thereof (p. 139, l. 4). This was delivered to the meeting by W. W. Hepburn (p. 139, l. 8), who now contends that in May, 1915, Shaw parted with custody,

control and interest in said stock. He does not contend that, when he delivered the waiver or consent to the company in order that a meeting of directors could be held, he made any mention of complainant's ownership or interest in the stock in controversy.

Complainant would have the Court believe that in May, 1915, P. B. Shaw ceased to be a stockholder of United Water, Gas and Electric Company. If true, he then ceased to be a director. (Section 12 of the Corporation Act). Shaw himself could not, perhaps, thereafter take any action which would affect complainant's title to said stock, but in September, 1915, he signed a waiver of notice, or a consent to the holding of a directors' meeting, thereby asserting that he was still a stockholder of the company. This would have no bearing whatever upon the situation were it not for the fact that this paper signed by Shaw was taken to the directors' meeting by W. W. Hepburn. He, on the one hand, contends that Shaw had no interest in the stock, and on the other hand asserts that he did have stock, thus discrediting entirely his testimony that the stock was delivered to him by Shaw in May, 1915, and explaining fully the failure to attach revenue stamps in May, 1915, which stamps were in fact attached October 28, 1915.

If, in fact, the stock certificates were delivered by Shaw to W. W. Hepburn in May, 1915, the purpose for which they were delivered is indicated in Hepburn's testimony, (p. 107, l. 33), where he testifies that he said to Shaw:

"I think I ought to have this stock, because I will probably have to make an agreement of sale and delivery."

This was required in order to carry out the settlement of Shaw's difficulties with the company.

Under the Act of Congress, a transfer of stock in May, 1915, was required to be stamped. Said stock certificates were not stamped until October 28th, 1915, when stamps were attached to them and the penalty remitted by the Collector at Philadelphia (Exhibit C-1, p. 176; and pp. 65 and 76 of the testimony of W. W. Hepburn) attempting to explain this alleged oversight.

Complainant could not fix the date when the stock certificates were delivered to W. W. Hepburn by P. B. Shaw, her father. On this point, we are left entirely to the testimony of W. W. Hepburn.

Two living persons have knowledge as to the circumstances, time and facts surrounding the actual delivery of the stock certificates by P. B. Shaw to W. W. Hepburn. P. B. Shaw, a party to the suit, father of the complainant, and undoubtedly interested in seeing that complainant's title to said stock should be sustained, and likewise, beyond a doubt, a witness who could be produced by the complainant, if desired, was not offered. This leaves W. W. Hepburn the only person whose testimony was offered to establish the title of complainant to the stock.

He is a party in interest, is the husband of the complainant, and for all intents and purposes may, for the moment, be regarded as the real complainant. We submit that his testimony should be subjected to the closest scrutiny. He, and he alone, fixes the date when complainant secured title to said stock. He can fix that date arbitrarily without fear of contradiction. He can fix it at such time as he believes will answer complainant's pur-

pose, namely, will most clearly establish her title to the stock. Having fixed any arbitrary date, no testimony can be offered by anyone to show that such date is not correct or that the transactions related by him did not occur.

It becomes, therefore, of vital importance to examine the acts of W. W. Hepburn, beginning about the middle of May, 1915, and continuing thereafter, and on this point we find :

(1) His testimony to the effect that he advised Mr. Bressler, and other persons who agreed to purchase said stock, that the stock belonged to Mrs. Hepburn. Mr. Bressler denies that such statement was made.

(2) May 13, 1915, W. W. Hepburn wrote to Bressler (p. 147, l. 31) referring to the purchase of *his* portion of the stock, namely, Shaw's.

(3) May 21, 1915, W. W. Hepburn wrote to Bressler (p. 149, l. 16): "It was only a question of getting at what was a fair price for *his* interest," referring to Shaw's interest.

(4) Between that date and June 21, 1915, W. W. Hepburn signed a draft of agreement (p. 196) between Shaw and himself, parties of the first part, and Bressler and others, of the second part, the preamble of which agreement reads as follows:

"WHEREAS, the *parties of the first part own or control* 380 shares of the capital stock of the United Water, Gas & Electric Company, a corporation of the State of

New Jersey, which the parties of the second part have agreed to purchase upon the terms and conditions hereinafter stated."

The stock in controversy is part of said 380 shares.

Hepburn took that agreement to Tower City and met Bressler and his associates, and was prepared to proceed thereunder, intending, surely, at that time, to have the agreement signed by the purchasers. It was not signed because of a telephone conversation, memorandum of which is found on p. 145, l. 22, to p. 146, l. 12, the substance of which is that Shaw, or his attorney, objected to signing the agreement "in the shape that it is at present," and asked whether it would matter to the purchasers if some one else agreed to deliver the stock instead of Shaw, but not in the slightest way indicating that Shaw did not then own the stock.

The draft of agreement which was there ready for execution, but which was not executed because of Shaw's objection, was thereafter incorporated into two agreements, under one of which complainant agreed to sell the stock and under the other of which Shaw undertook to carry out other features provided for in said draft.

5. W. W. Hepburn made no offer to explain why he recited that Shaw, as one of the parties of the first part in said draft of agreement, *owned* or *controlled* said stock.

6. As additional evidence of the date of delivery of the stock, we find that revenue stamps required to be attached thereto upon transfer, and which should have been attached in May, 1915, were not in fact attached until October 28, 1915, when the Revenue Collector attached and

canceled stamps and remitted the penalty, and which was after judgment had been entered against Shaw and after proceedings to seize and attach said stock in Schuylkill county had been instituted.

Appellant contends that W. W. Hepburn's explanation is not convincing on this point.

7. Appellant produced the answer of

It is submitted that as between written declarations made by W. W. Hepburn during the month of May, 1915, and June, 1915, throughout which he indicated that the stock belonged to Shaw, and the declarations made by him at the time of trial, to the effect that immediately after May 14, 1915, Shaw delivered the stock to him for the benefit of the complainant, the latter statement of W. W. Hepburn cannot prevail, and the Court must find as a fact that the stock was not delivered to W. W. Hepburn for the complainant, as alleged.

*on course
required by
the report*

The main issue is, in the first instance, whether the complainant, in May, 1915, acquired good title to said stock. If she did, The Pennsylvania Company for Insurances on Lives and Granting Annuities acquired no title by the Sheriff's sale. If complainant did not acquire said stock for a valuable consideration at that time her case falls, and The Pennsylvania Company for Insurances on Lives and Granting Annuities must be considered to have acquired said stock under its execution.

POINT II.

TRANSFER OF SAID STOCK FROM SHAW TO COMPLAINANT, IF, IN FACT, SUCH TRANSFER WAS MADE, WAS VOID AS AGAINST THIS APPELLANT, A CREDITOR OF P. B. SHAW, AND SHOULD BE SET ASIDE.

Philip B. Shaw, who parted with said stock, according to complainant's claim, in May, 1915, had been extremely wealthy (p. 121, *et seq.*), but his fortunes had declined. In 1914 his gross income was about \$10,000.00, with no net income (p. 122, l. 11), of the testimony of Parkman, the bookkeeper, who left his employ about April 1, 1915, (p. 120, l. 12) and who testified that during the first three months of 1915 Shaw's income was possibly \$2,500.00 (p. 122, l. 32), none of which reached him because it was income from securities, which was collected by banks and applied on account of interest on loans, with the result that during the first three months of 1915 Shaw received no income whatever. (P. 123, l. 30.)

The judgment of \$93,693.94 entered against Shaw by The Pennsylvania Company for Insurances on Lives and Granting Annuities on July 13th, 1915, has not been satisfied.

Clearly, during all of 1915 Shaw was insolvent. (P. 75, l. 28; p. 97, l. 1, and testimony of Parkman, beginning on p. 121; also pp. 168-170, l. 25.)

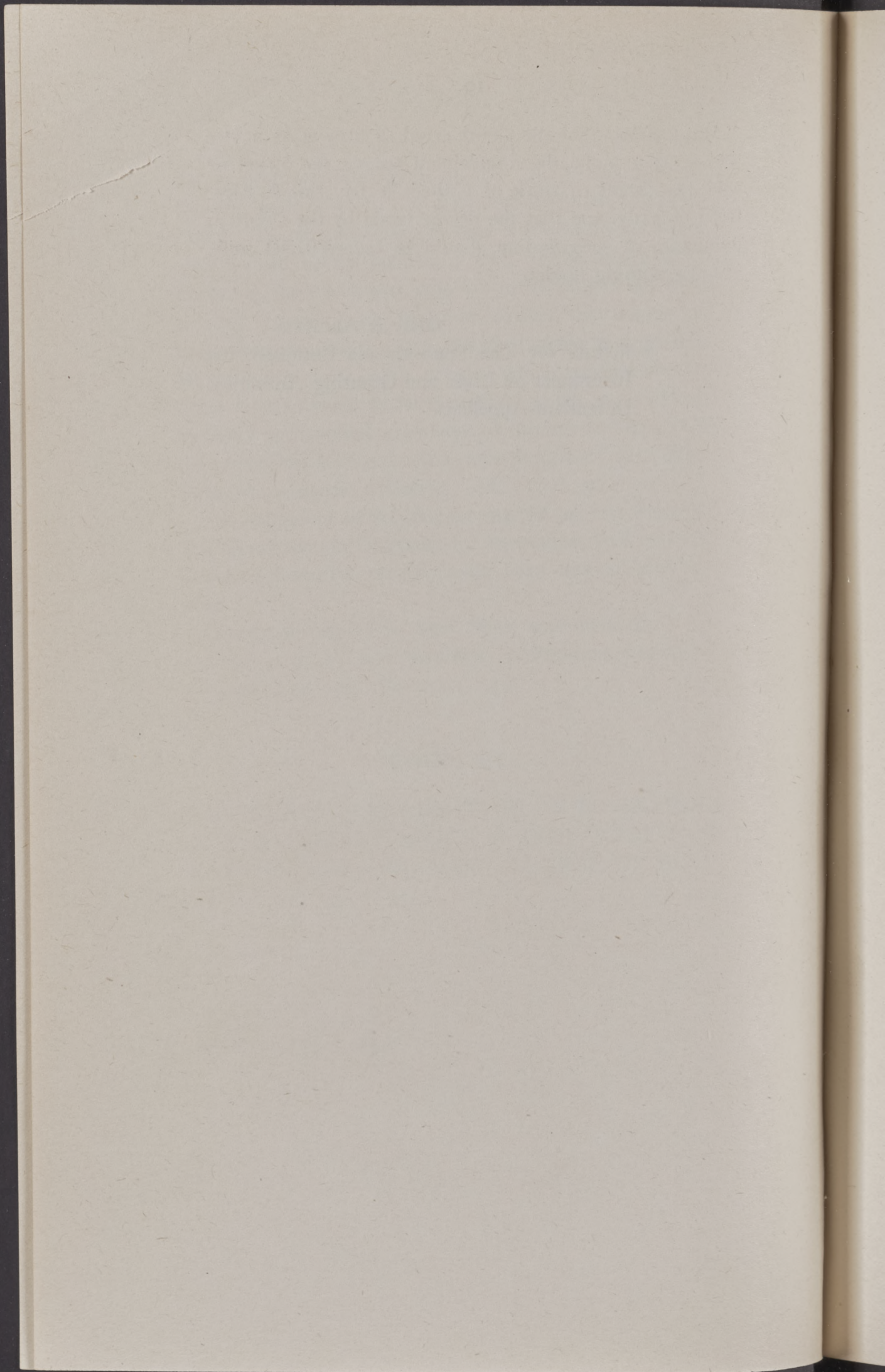
POINT III.

EVIDENCE WAS ADMITTED AS TO ENTRIES IN P. B. SHAW'S BOOKS WHICH WERE NOT MADE IN THE ORDINARY COURSE OF BUSINESS. (P. 125, l. 33.)

(See p. 125, l. 33.)

We contend that the Court erred in finding as a fact that in May, 1915, the complainant became the owner of said 349 shares of stock of United Water, Gas & Electric Company, and that the decree made by the Court in pursuance of such finding should be reversed, set aside and for nothing holden.

GREY & ARCHER,
Solicitors for The Pennsylvania Company for
Insurances on Lives and Granting Annuities,
Defendant-Appellant.



NEW JERSEY COURT OF ERRORS AND
APPEALS

Between
JANE SHAW HEPBURN,
Complainant-Respondent,

and

UNITED WATER, GAS & ELEC-
TRIC COMPANY, PHILIP B.
SHAW, JOHN PFEIFFER, G.
SCHOFFSTALL, HARPER T.
BRESSLER, W. N. SNYDER,
B. W. FEES and CHRIS-
TIANE LONG,
Defendants-Respondents,

ON APPEAL, &c.

and

THE PENNSYLVANIA COM-
PANY FOR INSURANCES ON
LIVES AND GRANTING AN-
NUITIES,
Defendant-Appellant.

Brief on Behalf of United Water, Gas & Electric
Company, John Pfeiffer, G. Schoffstall, Harper
T. Bressler, W. N. Snyder, B. W. Fees and
Christiane Long, Defendants-Respondents.

PLEADINGS.

The attitude of the United Water, Gas & Electric
Company with reference to this litigation is shown

by the following excerpt from its answer (C. p. 27, l. 16):

“Submits itself to the jurisdiction of the
“Court, for the purpose of performing any de-
“cree with reference to the transfer of the
“shares of stock referred to therein, as may be
“made in favor of or against any of the parties
“thereto.”

The position taken by the remaining defendants, on behalf of whom this brief is presented, is displayed by paragraphs thirteen to nineteen, both inclusive, of their answer (C. pp. 53, 54, 55).

ARGUMENT.

As between the complainant and the Pennsylvania Company, these defendants are strictly neutral, except that the defendants are anxious to secure the benefit of their contract with the complainant for the purchase of the shares of stock involved.

It is perfectly apparent that the agreement between the complainant and these defendants was made in good faith, and the latter understood that upon the consummation of the bargain with the complainant they would become the absolute owners of the said shares of stock.

The sum of \$8700, the purchase price of the shares, was deposited with the Pennsylvania Company in a special account, in accordance with the letter of the company dated September 10th, Exhibit C3 (C. p. 18, l. 10), which sum of money was to be paid over by the Pennsylvania Company to the complainant upon satisfactory evidence furnished, by the defendants,

that all of the things required to be done by P. B. Shaw, the complainant and the defendants, under the several contracts, had been completed.

The defendants, therefore, claim that they have the right to receive from the complainant the certificates for the shares of stock in her possession duly transferred upon the compliance by her and Shaw of the collateral matters and things to be performed by them under the terms of said agreement, and when the certificates are put into possession of defendants, they will then become the absolute owners of the stock, free and clear of any right or claim therein by the Pennsylvania Company.

It is apparent, therefore, that even if it be determined upon this appeal that the transfer of the shares of stock, from Shaw to the complainant, was void as against the Pennsylvania Company, as claimed in point two of the brief of that defendant, such contention cannot prevail as against the right of these defendants to have the shares of stock transferred to them.

The reason for this is manifest. The defendants acquired a right or interest in the said shares by reason of their contract for the purchase of the same from the complainant, and are entitled to become the absolute owners thereof, upon the performance by Shaw and the complainant of all the matters and things to be fulfilled by them under the terms of the several agreements, and these defendants should be permitted to assert such right against any title to said stock on the part of the Pennsylvania Company, because no interest or claim was acquired by the latter until the attachment was issued on October 18, 1905, nearly four months after defendants agreed to purchase the shares of stock from the complainant.

Under these circumstances, therefore, and in view of the fact that the defendants made their agreements in good faith, and their interest in the shares of stock was *bona fide*, and without any knowledge, at the time the agreements were made, that any person except the complainant had any right thereto, and a valuable consideration was paid by the defendants for their interest in said stock, they are now entitled to assert such interest as against the Pennsylvania Company, and become the absolute owners of the stock upon the performance, by Shaw and the complainant, of the terms of their agreement.

As a practical proposition, however, it will not become necessary to have any relief afforded to these defendants, if the decree of the Court of Chancery be affirmed, because the rights of the defendants are protected as against the complainant by the said agreements. If, however, it be determined by this Court that the rendering of decree appealed from was not justified, then the rights of these defendants should be protected in accordance with their answer, and if it be held that the Pennsylvania Company is the owner of the shares of stock, and entitled to assert such ownership against both the complainant and these defendants, relief in favor of the Pennsylvania Company can only be granted upon the terms that the fund of \$8700, deposited with the latter company, should be returned to the defendants.

LEWIS STARR,
*Of Counsel with Defendants
above named.*

New Jersey Court of Errors and Appeals

Between

JANE SHAW HEPBURN,
Complainant-Respondent;

and

UNITED WATER, GAS AND ELECTRIC
COMPANY, PHILIP B. SHAW, JOHN
PFEIFFER, G. SCHOFFSTALL, HAR-
PER T. BRESSLER, W. N. SNYDER,
B. W. FEES AND CHRISTIANA LONG.
Defendants-Respondents;

and

THE PENNSYLVANIA COMPANY FOR
INSURANCE ON LIVES AND GRANT-
ING ANNUITIES,
Defendant-Appellant.

BRIEF FOR COM-
PLAINANT-RESPON-
DENT, JANE SHAW
HEPBURN

STATEMENT.

In the month of May, 1915, the complainant, Jane Shaw Hepburn, became the owner of 350 shares of the capital stock of the United Water, Gas and Electric Company, a New Jersey corporation, (herein styled the Water Company), represented by five certificates (Exhibit C1, pages 176 to 179, inclusive). One share of this stock

came to complainant from Lewis Starr as record owner, and as to this one share the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities (herein styled The Pennsylvania Company), now abandons all claim. (See Brief of Pennsylvania Company, page 2). The other 249 shares came to complainant by assignment from her father, P. B. Shaw, in the month of May, 1915, at which time these certificates were delivered to W. W. Hepburn, her husband, for her. Since that time said certificates have been in the possession of herself or of her husband for her and under their exclusive control. Complainant demanded of the Water Company that it transfer to her, upon its corporate books, these 350 shares of stock, and upon its refusal so to do, she filed her Bill of Complaint to compel such transfer. The Water Company is willing to make the transfer, but has been notified by the Pennsylvania Company not to do so, as it, the Pennsylvania Company, claims to be the owner of the shares and itself entitled to a transfer to its own name on the Water Company's books. While, therefore, the Water Company is a party defendant and one of the respondents on this appeal, yet it did not in the Court below oppose the granting of a Decree in favor of the complainant, and its position is now one of strict neutrality between the real contending parties, to wit, the complainant and the Pennsylvania Company.

The learned Vice Chancellor, in granting a Decree to the complainant, places his decision squarely upon the truth of the testimony offered. In brief, the Vice Chancellor found as facts the following:

—That in the month of May, 1915, complainant's father, P. B. Shaw, was indebted to her in the sum of \$35,000.00 or over, because of advances theretofore made by complainant to him,

—That in the month of May, P. B. Shaw, being so indebted, assigned to complainant the certificates of stock in question in part liquidation of this debt.

—That complainant, or her husband for her, then received, and have since been in absolute possession and control of these shares of stock.

—That on the filing of the Bill herein complainant was the owner of said shares and in possession of the certificates representing said shares.

The Pennsylvania Company, appellant on this appeal, challenges the correctness of these findings of fact.

ARGUMENT.

FACTS.

In our judgment the findings of fact by the Court below are unassailable. Not only are these findings supported by the testimony, but by testimony which stands uncontradicted by a single witness. The facts may be grouped around the following propositions:

—P. B. Shaw, being the actual and record owner of the shares in question, assigned, transferred and delivered to complainant these shares and the certificates representing them in the month of May, 1915.

—This assignment and delivery was bona fide and for a valuable consideration.

For the sake of convenience, we will consider these propositions in their inverse order:

I.

Was there a valuable consideration for the transfer of these shares of stock?

We have the unchallenged testimony of the complainant and her husband, W. W. Hepburn, to the effect that, about one year prior to May, 1915, the complainant advanced to her father, P. B. Shaw, the following securities: 350 shares of the Pennsylvania Building Company and bonds of the Pennsylvania Marble and Granite Company, of a par value of \$10,000.00. (Testimony, pages 63 and 128). Their testimony is confirmed by that of P. B. Shaw's bookkeeper, George Parkman, who produced, identified and explained the books of account of P. B. Shaw. These books showed that on December 25, 1906, P. B. Shaw gave to his daughter 100 shares of the Pennsylvania Building Company (Page 111), and that in December, 1909, P. B. Shaw gave to complainant \$5,000.00 of bonds of the Pennsylvania Marble and Granite Company, and also to W. W. Hepburn \$5,000.00 par value of the same bonds. (Page 116). They further show that on April 5, 1913, P. B. Shaw borrowed from complainant \$10,000.00 of bonds of the Pennsylvania Marble and Granite Company. (Page 117). On April 7, P. B. Shaw borrowed from Mrs. Hepburn \$35,000.00, representing 350 shares of the common stock of the Pennsylvania Marble and Granite Company. (Page 119).

In short, P. B. Shaw's own ledger shows a credit to her account of \$45,000.00.

Mr. Parkman also states (pages 119 and 120), that he had actual knowledge of the receipt by P. B. Shaw of these securities from Mrs. Hepburn.

On these undisputed facts, from the three witnesses named, the Vice Chancellor found that Mr. Shaw was in-

debted to his daughter in the sum of at least \$35,000.00 when he transferred the shares of the Water Company to her in May, 1915. The only point raised by the Pennsylvania Company against this finding of fact is counsel's assertion that Shaw's books were not admissible. This criticism is without foundation. Admittedly they were the books of Shaw, they were kept by witness Parkman and in the regular course of Shaw's business. The entries therein, made years before this controversy arose, confirm the oral testimony of complainant and her husband.

II.

Did P. B. Shaw, in the month of May, 1915, actually assign and transfer to the complainant these shares of stock? In short, was there a bona fide transfer at or about the time named?

The testimony produced by the complainant in support of this proposition is overwhelming. No word of testimony will be found which challenges either the actual transfer or its bona fides. All statements in opposing counsel's Brief, in criticism of this transfer to Mrs. Hepburn, are based, not upon facts, but upon conjecture only. No witness was produced by the defendant to challenge, either directly or indirectly, the fact of transfer.

(1) Complainant and W. W. Hepburn, her husband, both stated expressly that P. B. Shaw agreed in January, 1915, to transfer to Mrs. Hepburn these shares of stock in part liquidation of her debt, and that in pursuance of that agreement P. B. Shaw did, in the month of May,

1915, actually deliver these certificates to W. W. Hepburn for his wife.

In addition to this we have the admitted fact that on June 23, 1915, complainant executed an agreement with the defendants, in which she asserted her ownership to these shares and agreed to sell the same to defendants, Bressler, et als. The ownership of Mrs. Hepburn was also recognized by all of the defendants when the sum of \$8,700.00 was placed with and accepted by the Pennsylvania Company, to be paid to complainant as the consideration for the sale by her to the other defendants of these shares of stock. (Exhibit C3, page 18). So that, for several months before any claim of ownership upon this stock was made by the Pennsylvania Company, that Company and the other defendants in this case acknowledged by their own signed agreement that the complainant was the owner of the shares in question. It was not until October of that year that defendant, Pennsylvania Company, attempted by an attachment in Pennsylvania to secure a lien upon these shares as the property of P. B. Shaw and to sell the same for a judgment of the Pennsylvania Company against P. B. Shaw.

The Vice Chancellor has stated in his opinion that he could not refuse a decree to complainant without finding the complainant and her husband guilty of deliberate perjury. This he refused to do and commended their testimony as truthful. It is also worthy of comment that there was no attempt by the defendant to impeach the complainant or her husband or Parkman, the bookkeeper. They are reputable people and their testimony must be accepted as truth, especially in the absence of any testimony to the contrary.

(2) What then, is the criticism by the defendant of the case made by the complainants and of these findings of fact by the Court of Chancery?

(a) It is suggested that in June, and prior to the 23rd of the month, a draft of an agreement was prepared by an attorney representing other interests, from which an inference might be drawn that P. B. Shaw might, at that time, have had an interest in these shares of stock. (Draft of agreement, Exhibit D5, page 196). The complete answer to this insinuation of a lack of good faith is that said draft was not executed. P. B. Shaw refused to sign it and his attorney refused to let him sign it, because it might be inferred therefrom that he was the owner of these shares of stock, when, in fact, he was not. This is the purport of the telephone conversation between W. W. Hepburn and P. B. Shaw in the presence of defendants, Bressler, et als., in the month of June, (about June 2d). (Bressler, pages 145-146; Hepburn, page 174). At that time it was brought to the attention of Bressler, et als., that P. B. Shaw was not the owner of these shares of stock. As a result of this criticism of the form of agreement (Exhibit B5), and of the mingling therein of matters which should be separated, two agreements were drawn and Jane Shaw Hepburn signed the agreement with reference to the same of stock, and P. B. Shaw signed the agreement relating to those matters which involved him personally.

(b) Defendant refers to three letters from W. W. Hepburn to Harper T. Bressler (pages 147, 149 and 151), as indicating that on the dates of those letters Mr. Shaw believed he was the owner of the stock. It will be remembered that the defendant, Pennsylvania Company, asserts a title to this stock which is based upon an attachment in Pennsylvania, issued out of the Schuylkill County Court, against P. B. Shaw on **October 19, 1915**. On June 23, 1915, the complainant made her agreement (Exhibit C1), with defendants, Bressler, et als., looking toward a sale of these shares of stock by her to Bressler, et als., and

on September 10, 1915, the Pennsylvania Company received the sum of \$8,700.00 to cover the purchase price as trustee for complainant. See Exhibit C3, page 18). It is not even pretended that after June 23, 1915, P. B. Shaw said anything or did anything to indicate a belief that he owned this stock.

In order to understand the mental attitude of P. B. Shaw we should recall that prior to the assignment and delivery of these shares by Shaw to his daughter, there were pending several suits between himself and Bressler, et als., in the Courts of both New Jersey and Pennsylvania, in which Shaw claimed as against Bressler et als., that he, Shaw, was the rightful owner of **ALL** the stock of the Water Company, which, in turn, owned the stock of the Williams Valley Water Company. (Pages 147 and 148). Furthermore, Shaw had advanced considerable sums to the Williams Valley Water Company, and there were other matters of difference and in litigation between Shaw and Bressler, et als. Before the transfer to Mrs. Hepburn, Shaw had for sometime been litigating over his interest in the Water Company and the Williams Valley Water Company. He then claimed all of the stock of the Water Company as against Bressler, et als. The settlement between Shaw and Bressler was to eliminate all interest by Shaw in the Water Company. Therefore, the settlement took the form, not merely of the purchase of certain shares of stock, but as well of an adjustment of all the outstanding differences between Shaw and other parties. W. W. Hepburn makes it clear that the transfer of the shares to Mrs. Hepburn and actual delivery of the certificates to him for her took place within a day or two after Mr. Hepburn's return from the Harrisburg hearing in this pending litigation. (Page 68, line 20). It was at this hearing at Harrisburg when, as Mr. Bressler asserts, Shaw claimed to be the owner of the entire stock of defendant Water Company. (Page 148). At the

time he made the assertion Shaw did hold the shares in question.

It is thus apparent that there is no real discrepancy between the statement of Shaw and the facts as actually testified to by complainant and W. W. Hepburn.

The bona fides of this transfer is further shown by the fact that, when the attorney for the purchasers drew an agreement, from which it might be inferred that Shaw was personally the owner of or interest in the shares of stock now in litigation, Shaw's attorney refused to permit the agreement to go through in that shape, and he and Mr. Shaw required a redrafting of the agreement and a division of it into two parts. This is established not merely by the testimony of W. W. Hepburn, but also by the testimony of defendant Bressler as well. (Hepburn, page 174; Bressler, page 146).

It is, therefore, incorrect to say that, upon an examination of these letters and the admitted facts as testified to by both Mr. Bressler and Mr. Hepburn, it might be inferred that Mr. Shaw was the owner of the shares in question subsequent to the hearing in the litigation at Harrisburg in the month of May.

But even if the inference could be drawn from these letters up to June 2, 1915, that P. B. Shaw then had an interest in these shares of stock, it is definitely established by all parties on June 23, that the complainant was the owner of the stock in and by the agreement which she signed with Bressler for the sale thereof. Appellant, Pennsylvania Company, was then notified of such ownership and became bound thereby in accepting a trust in favor of complainant for the payment to her of the agreed purchase price. (Page 18, Exhibit C3.)

(c) Defendant suggests that Mr. Shaw admitted ownership of these shares in September, 1915, by signing a consent to the holding of a director's meeting. (See Brief,

page 13). Mr. Shaw did not sign a waiver of notice, but at the request of defendants merely signed a consent to the holding of a meeting, because, apparently, no formal resignation of Mr. Shaw as a director had been received. This consent merely states as follows:

“I hereby consent to the holding of meeting
of the United Water, Gas and Electric Company
on September 8, 1915, at 12.30 o'clock P. M.
P. B. SHAW.”

(Page 139).

There is no admission or claim of ownership by this consent, and the defendant is hard pressed for material to assert this as a point in its criticism of the findings of fact by the Court below.

(d) In similar fashion we are told that the cancellation of the revenue stamps attached to these shares of stock on October 28, 1915, proves that P. B. Shaw was the owner of the stock up to that time. W. W. Hepburn fully explains his failure to cancel the stamps. He overlooked the stamping of the transfers on these shares and on the agreement of June 23, as well. (Page 65). The matter was not noticed except by C. J. Hepburn, attorney for the complainant in Philadelphia, who directed his brother, W. W. Hepburn, to take the papers to the office of the Revenue Collector and have the stamps properly cancelled and the fine remitted.

(e) Defendant criticises the non-appearance of P. B. Shaw as a witness. Shaw could have done no more than testify orally or from his books. His testimony would not have been believed if it had been at variance with his books. The books themselves were produced, identified and explain-

ed by Shaw's own bookkeeper, who made all the entries in the books years before this controversy arose. The testimony of the bookkeeper had far greater weight than any statement from Mr. Shaw could have had. Witness Parkman was entirely disinterested and his testimony stands unimpeached.

It is thus made clear that the defendant rests its defense, not upon any affirmative testimony tending to show its ownership of the stock, but upon mere innuendoes and suspicion. The Court below rightly held that it would not convict the witnesses of the complainant of wilful perjury on any innuendoes and suspicion. The Vice Chancellor, after hearing the testimony, observing the witnesses and their manner of testifying, and being in a position to judge of their credibility, found in express terms that the complainant, her husband and Parkman, spoke the truth. We submit that the Appellate Court should affirm that finding.

(f) ON PAGE 17 OF DEFENDANT'S BRIEF, IT IS CLAIMED THAT EVEN IF THE TRANSFER WAS MADE BY SHAW TO HIS DAUGHTER IN THE MONTH OF MAY, 1915, IT WAS VOID AS AGAINST DEFENDANT WHO WAS A CREDITOR OF SHAW.

(1) It was not even established by defendant that Shaw was insolvent at the time of the transfer. The most he showed was that the income of Shaw, while it had been very large, had greatly diminished at the time of the transfer.

(2) But even if insolvency had actually been shown, it was also shown that the transfer was made bona fide and upon good and valuable consideration. A transfer made under those circumstances is valid.

III.

The Pennsylvania Company is Trustee for complainant in respect of the very subject matter of this controversy, and cannot, therefore, contest the title of complainant to these shares of stock.

—By the agreement of June 23, 1915, complainant was to receive \$8,700.00 from Bressler, et als., as the purchase price of her stock upon the carrying out of the details of purchase.

—The Pennsylvania Company accepted from Bressler et als., this \$8,700.00, to be held by it for payment to complainant under the agreement of June 23. It took a signed copy of this agreement, endorsed thereon the date of the receipt and acknowledged the trust in the letter marked Exhibit C-3 (pages 18, 134 and 135).

The Pennsylvania Company, notwithstanding the fact that it had become trustee for complainant, proceeded, in October, 1915, to contest her title to the stock by issuing an attachment out of the Schuylkill County Court, and by an attempt to levy on this stock as the stock of P. B. Shaw. Such action on its part is violative of the fundamental principles of equity jurisprudence.

39 *Cyc*, page 226:

“Trustee accepting a trust is estopped from contesting the title of the creator of the trust to the property conveyed to the trustee by the declaration of trust or from denying the validity of the trust, and from setting up a claim to the trust estate as against the

beneficiary under the trust or denying title or estate of the person for whose benefit the trust was created or for whom he holds it."

Krauczunas vs. Hoban, 221 Pa., 213 (1908):

"It is fundamental that a trustee, while occupying a place of trust and confidence cannot be heard to set up an adverse holding."

Perry on Trusts, Sec. 863, page 734:

"The relations and privity between trustee and cestui que trust are such that the possession of one is the possession of the other and there can be no adverse claim or possession during the continuance of the relation. Lord Justice Knight Bruce said, that where one entered into possession as trustee, he could not be permitted to set up a possession or title in himself adverse to the cestui que trust. It is the duty of the trustee, if he intends to claim the estate, to resign his trust and deliver over the possession which he received as trustee. He will then be in a position to maintain his claims, for no claims should be made through a breach of trust. And no trustee, while occupying a place of trust and confidence should be allowed to set up an adverse title. This rule applied to all acting as trustee, whether regularly appointed or not. It also applied to all who stand in a fiduciary relation to others, as executors, administrators or guardians."

Von Hurter vs. Spengman, 17 N. J. Eq., 185 (1864):

"A party who acts as the agent of another in the sale of land, and receives the purchase money therefor as

such agent, is estopped from questioning the title of his principal to the premises, or to the proceeds of sale."

"A purchase by an agent or trustee in his own name, while in the performance of his office, enures to the benefit of his principal or cestui que trust."

"But the defendant objects, first, that at the time of the sale to Korn, the title to the lot in question was not in Von Hurter, but that the premises had previously been conveyed to Michael Lienan to secure a debt to him, and to defeat the claims of Von Hurter's creditors. There is no evidence of fraud practiced or meditated in the conveyance to Lienan. If there was, the objection does not lie in the mouth of this defendant. The land was sold to Korn as the property of Von Hurter. The sale was effected by the defendant, the title was perfected in Korn, and the purchase money was paid to the defendant as the agent of Von Hurter, in fulfillment of that contract. The defendant is estopped from questioning Von Hurter's title to the premises, or to the proceeds of the sale." (Page 187.)

Associate Alumni v. Gen. Theological Seminary, 163 N. Y. 417.

McLeran v. Melvin, 56 N. C. 195.

Morris v. Morris, 48 W. Va., 430.

State v. Merrill, 1 Chandler, (Wisc.) 258.

Guilford v. Arthur, 158 Ill., 600.

Paull v. Oliphant, 14 Pa., 342.

Morris v. Morris, 48 W. Va., 430.

Sterling v. Sterling, 77 Minn., 12.

Newsome v. Flowers, 30 Beav. 461; 31 L. J. Ch. 29.

Meligan v. Roche, 7 Ir. Eq., 332.

Pearson v. Sedley, 2 Jus. 758.

It appears by the exemplified copy of the record of the proceedings of Schuylkill County that the judgment against Shaw by the Pennsylvania Company was entered September 8, 1915. (Page 182). On October 19, an attachment execution was issued on this judgment to defendant Water Company (Page 180), with an attempt to secure a lien upon these shares of stock of a New Jersey corporation by going to its books which happened to be in the State of Pennsylvania at the time. (Page 181).

In this connection we desire to call the Court's attention to the statement in defendant, Pennsylvania Company's Brief, page 3, line 3, as follows:

"Having caused said stock to be seized and sold under said attachment, &c."

This is an incorrect statement. Said certificates were never seen by the attaching officer, not to mention **seized**.

On November 1, 1915, service of interrogatories was admitted by Bressler, Secretary of the New Jersey Company, within the State of Pennsylvania (page 186), and on November 3, his answers were made setting forth the shares of stock in question as being in the name of P. B. Shaw on the books of the Company. (Page 188). He did not in the answers to these interrogatories state that P. B. Shaw was the **owner** of these shares.

Thereafter, under said attachment execution, the Pennsylvania Company attempted to make sale of these shares and the defendant, Pennsylvania Company, pretended to acquire title thereto by purchase at the sale. Complainant had no knowledge of these proceedings in Pennsylvania.

We have the Pennsylvania Company, therefore, while trustee for complainant, attempting to defeat the title of its cestui que trust in order to satisfy its own judgment against a third party. This is a violation of its trust obligation and will not be tolerated by a Court of Equity.

IV.

The Pennsylvania Company could not acquire a lien in Pennsylvania upon shares of stock of a New Jersey corporation by the inspection of the books of the non-resident corporation within the State of Pennsylvania.

The situs of stock of a New Jersey corporation is in New Jersey. It is established by a uniform line of decisions that one cannot attach shares of stock outside of the State of the domicile of the corporation.

Weaver vs. Manville, 21 Pa. C. C. 318:

“A defendant’s share of stock cannot be reached by levy of attachment in an action commenced outside of the State wherein the corporation is incorporated.”

Christmas vs. Biddle, 13 Pa. St. 223 (1850):

“A certificate of stock in a bank, in another state, sent to an individual here with authority to sell it, is not subject to foreign attachment, under the laws of this State.”

And also on pages 223 and 224.

“The attachment process is a proceeding *in rem*, and the matter and thing attached must be in the power and jurisdiction of the Court. You might as well, by an ideal and constrictive service, on the person of a defendant resident in Mississippi, summon him to appear in Court, as to attach him to compel an appearance by attaching his bank stock in a bank

located and established by law in Mississippi. This stock is held and transferrable according to the law of its creation, the State of Mississippi, on the books of the bank only, either in person by the holder or by his attorney duly appointed. It will hardly be contended that lands in Mississippi could be attached, because the owner had sent on to the city his title deed with power to a broker to sell the same and raise money. Yet there is, in fact, no difference. It is the stock of a bank which is attached in this case, and the individual to whom the certificate of stock was sent with power to sell is made the garnishee. Bank stock is made subject to levy and attachment, recently by our statute; but, then, it is bank stock of our own State, subject to our own laws, and transferrable by a judicial sale under them; and not British or French bank stock, or the bank stock of any other State, which, in this respect is to be considered as a different sovereignty, and the property created by its laws must be considered subject to those laws, because its banks can exist in no other mode, nor in any other place than prescribed by its laws."

Greenwood vs. Mfg. Co. 13 *W. N. C.* 447 (*C. P.* 2 *Phila. Co.* 1883);

Childs vs. Digby, 24 *Pa. St.* 23 (1854);

Noble vs. Thompson Oil Co., 79 *Pa. St.* 354 (1875);

2 *Cook on Corporations* (6th ed.) *Sec.* 485;

19 *Cyc.* 1338 (iii);

Plymouth vs. Bigelow, 93 *N. Y.* 592 (1883);

Winslow vs. Fletcher, 53, *Conn.* 390 (1885);

We should also direct the attention of the Court to the statute of Pennsylvania of May 5, 1911, *Pamp. Laws*, 126, reading as follows:

"No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it."

This Statute was not brought to the attention of the Court below. Its existence has now been made known to counsel and we deem it our duty to call the attention of the Court to it. This law was in force prior to the attachment proceedings under which the Pennsylvania Company now bases its claim of title.

The attaching officer of the Pennsylvania Court never had his hands on or saw the certificates for the shares in dispute. The service of his writ by virtue of this Pennsylvania Statute was void.

SUMMARY.

We, therefore, submit that the decree of the Court below should be affirmed, and the title of the complainant to the stock sustained, because—

1. By the undisputed evidence complainant became the owner of that stock by bona fide transfer for valuable consideration in the month of May, 1915.
2. The defendant as trustee for complainant has no standing to contest the validity of her title.

3. Defendant can claim no title to the stock in question under the attachment proceedings in Schuylkill County, Pennsylvania. The situs of that stock was in New Jersey and a Pennsylvania Court could not by such a proceeding establish a lien upon it within the State of Pennsylvania.

4. When the Pennsylvania Company issued its attachment in Pennsylvania against P. B. Shaw it was impossible under the Pennsylvania Statute to attach or levy upon shares of stock unless the certificate therefor should be actually seized by the officer and there was no such seizure in this case.

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