

# INDEX.

	PAGE.
Bill of Complaint .....	1
Exhibit A .....	4
Answer and Counter-claim of Defendant, Isaac L. Evans .....	5
Answer of Defendant, Lane & Lockward Company .....	10
Order Permitting New Matter to be Set Up in Replication .....	12
Replication and Answer of Robert C. Lock- ward to the Answer of Isaac L. Evans.	13
Replication to Answer of Lane & Lockward Company .....	15
Answer of John C. Moore to Counter-claim of Isaac L. Evans .....	16
Order of Reference .....	19
Opinion .....	118
Final Decree .....	125
Appeal:	
Notice of .....	127
Petition of .....	129
Answer on .....	132
Notice of Argument .....	134

## TESTIMONY FOR COMPLAINANT.

Lockward, Robert C.	
direct examination .....	20
cross " .....	22
re-direct " .....	34
re-cross " .....	37
Rebuttal.	
direct examination .....	80
cross " .....	84
re-direct " .....	85
re-cross " .....	86

	PAGE.
Lockward, Lida L.	
direct examination .....	100
Moore, John C.	
direct examination .....	87
cross " .....	92
re-direct " .....	100

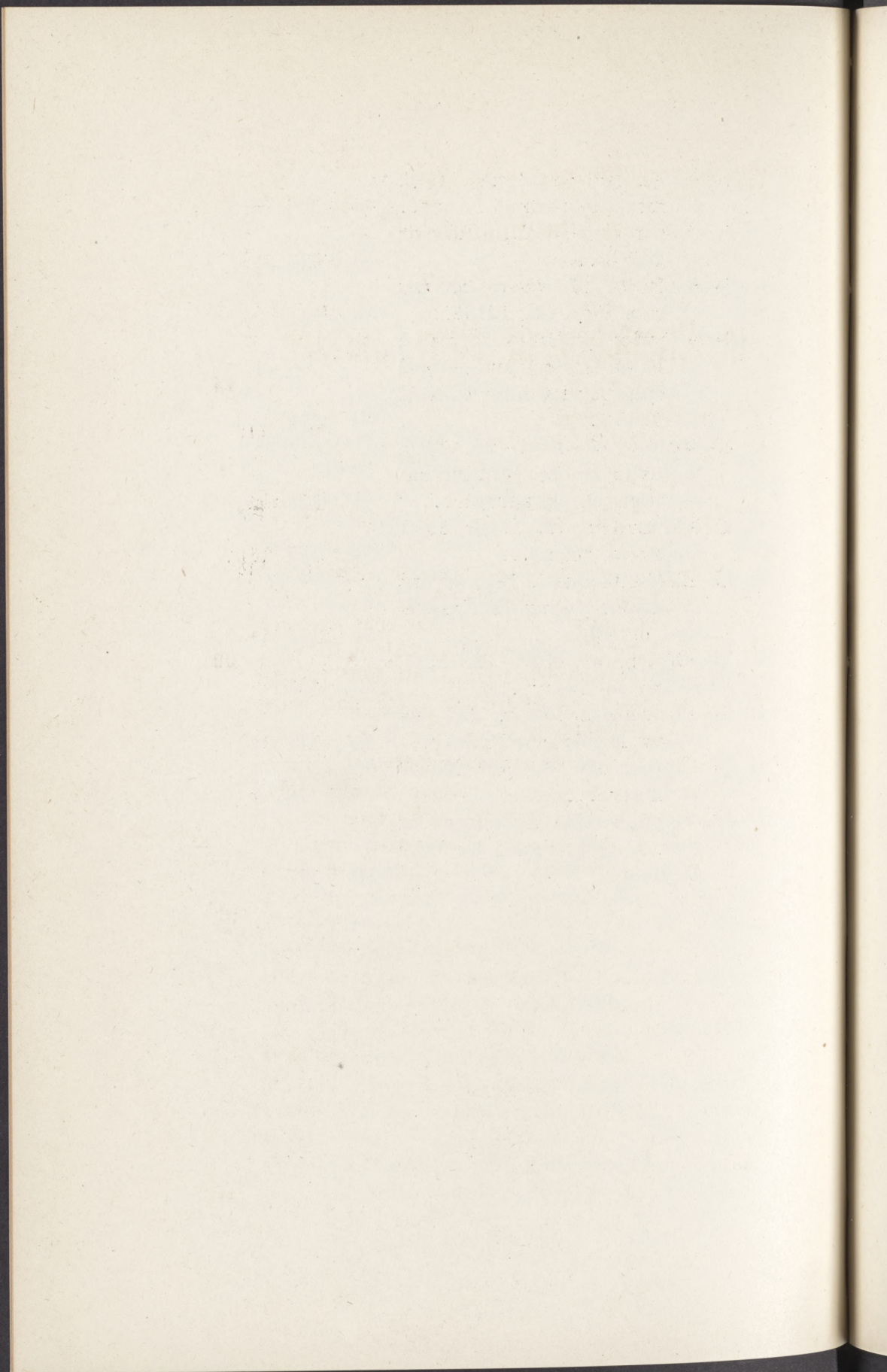
TESTIMONY FOR DEFENDANT.

Evans, Isaac L.	
direct examination .....	44
cross " .....	60
re-direct " .....	73
re-cross " .....	77
Harrison, J. Henry.	
direct examination .....	77

EXHIBITS.

	Offd.	Ptd.
C. 1—Certificate for 50 shares of stock in the Lane & Lockward Company, issued to John C. Moore .....	22	102
C. 2—Letter, Nov. 1, 1915, Lockward to Moore .....	23	102
C. 3—Promissory note — Lockward to Moore, dated April 10, 1916 .....	27	102
D. 1—Withdrawal of offer of Nov. 1, 1915, by Lockward.....	48	103
D. 2—Offer — Moore to Evans, dated Nov. 1, 1915.....	46	104
D. 3—Option dated Dec. 8, 1915, Lockward & Evans to Tansy.	55	105
D. 4—Option, Nov. 18, 1915, Lockward to Tansy .....	51	107
D. 5—Option, Nov. 18, 1915, Lida L. Evans to Tansy .....	55	108

D. 6—Agreement, June 14, 1913, between Moore and Evans..	45	108
D. 7—Offer, Nov. 22, 1915, Evans to Moore .....	49	110
D. 8—Reply of Moore to Evans’ offer of Nov. 22, 1915.....	50	111
D. 9—Offer by Moore to Evans of 50 shares of stock and refusal to accept Evans’ offer of Nov. 22, 1915 .....	50	112
D. 10—Letter of Nov. 27, 1915, Evans to Moore, pointing out violation of agreement.....	50	113
D. 11—Letter of Nov. 29, 1915, Moore to Evans.....	51	113
D. 12—Letter of Dec. 2, 1915, Evans to Moore, asking for inspec- tion of offer .....	51	114
D. 13—Option of Nov. 18, 1915, Evans to Tansy .....	56	115
D. 14—Agreement, Dec. 8, 1915, be- tween Evans and Tansy..	58	115
D. 15—Option, Dec. 8, 1915, Moore to Tansy .....	77	116
D. 15—Supplemental agreement of Nov. 1, 1915, signed by John C. Moore .....	60	117



*Bill of Complaint.*

**Bill of Complaint.**

Filed Sept. 5, 1916.

**In Chancery of New Jersey.**

10

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

The complainant, ROBERT C. LOCKWARD, of the Town of Caldwell, Essex County, New Jersey, respectfully shows, that:

1. Lane & Lockward Company is a corporation organized under the laws of the State of New Jersey, having its principal office in said Town of Caldwell. The capital stock of the said corporation is \$100,000, divided into 1,000 shares of the par value of \$100 each. 650 shares are issued and outstanding.

20

2. The officers of said corporation are Isaac L. Evans, president and treasurer, and complainant, secretary. The directors of said corporation are said Isaac L. Evans and complainant. Prior to the 10th day of April, 1916, John C. Moore was a director of the said corporation and the owner of 50 shares of the capital stock thereof. Prior to the 10th day of April, 1916, the said Isaac L. Evans was the owner of 305 shares of capital stock of said corporation, John C. Moore the owner of 50 shares, Lida L. Lockward, the wife of complainant, the owner of 5 shares, and complainant the owner of 290 shares. The stockholders and number of shares held are the same at the present time, except that complainant has purchased the shares owned by said John C. Moore.

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*Bill of Complaint.*

On the 10th day of April, 1916, complainant purchased from said John C. Moore the 50 shares of said capital stock owned by him, and on said day the said John C. Moore, in writing, sold, assigned and transferred to complainant said shares of stock, and irrevocably constituted  
10 and appointed the complainant to transfer the said stock on the books of said corporation, with full power of substitution in the premises. That a true copy of said certificate of stock, with the power of attorney endorsed on the back thereof, is annexed hereto, marked "Exhibit A," and made a part of this bill of complaint.

4. That upon the execution of the said assignment and transfer to complainant by the said John C. Moore, the said certificate for said  
20 shares of stock was delivered to complainant.

5. Complainant, as secretary of said corporation, made out a new certificate for 50 shares of the capital stock of said corporation from the stock book thereof, and filled in his name in said certificate as the holder and affixed the corporate seal thereto. Complainant then presented said new certificate to said Isaac L. Evans for his signature as  
30 president and treasurer, and thereupon tendered to him the old certificate received from the said John C. Moore as aforesaid for cancellation, and asked said Isaac L. Evans to sign said new certificate as president and treasurer of the said corporation and deliver the same to complainant in the place and stead of the old certificate. That said Isaac L. Evans then and there said that he would attend to the matter the next day, but on the next day or shortly  
40 thereafter, refused to sign the new certificate.

*Bill of Complaint.*

Complainant tenders himself ready and willing to surrender the old certificate upon the delivery to him of said new certificate.

6. Said Isaac L. Evans has fraudulently withheld his signature for the transfer of the said shares of stock, purchased from said John C. Moore as aforesaid, on the books of said corporation, and complainant is without adequate remedy in the courts of law, and therefore prays: 10

I. That the said Lane & Lockward Company and the said Isaac L. Evans, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made.

II. That a decree may be made ordering and directing said Lane & Lockward Company and said Isaac L. Evans to transfer said shares of stock on the books of the said corporation, and to issue and deliver to complainant in the place and stead of said certificate hereinbefore described, a new certificate for 50 shares of the capital stock of said corporation, executed under the seal of the said corporation by the proper officers thereof. 20

III. That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and to stand to and abide by such decree as the court may make in the premises. 30

RAYMOND, MOUNTAIN, VAN BLARCOM &  
MARSH,

*Solicitors and Counsel with the Complainant.*

*Bill of Complaint.*

*"Exhibit A".*

Incorporated under the Laws of the State  
of New Jersey.

LANE & LOCKWARD COMPANY.  
Capital Stock \$100,000.

10 No. 11 50 Shares

THIS IS TO CERTIFY that John C. Moore  
is the owner of fifty Shares of the Capital  
Stock of

LANE & LOCKWARD COMPANY  
transferable only on the books of the Company  
by the holder hereof in person or by Attorney,  
upon surrender of this Certificate properly  
endorsed.

20 In Witness Whereof, the said Corporation  
has caused this Certificate to be signed by its  
duly authorized officers and to be sealed with  
the Seal of the Corporation, this first day of  
January, A. D. 1908.

*Seal.*

Lewis G. Lockward,      Lewis G. Lockward,  
Treasurer.                      President.

30 Shares \$100.00 each.

*Endorsed on reverse side.*

For Value Received, I hereby sell, assign and  
transfer unto Robt. C. Lockward      Shares  
of the Capital Stock represented by the within  
Certificate, and do hereby irrevocably constitute  
and appoint Robt. C. Lockward to transfer the  
said Stock on the books of the within named

*Answer and Counter-claim of Isaac L. Evans.*

Company with full power of substitution in the premises.

Dated, April 10, 1916.

JOHN C. MOORE.

In the presence of  
Lida L. Lockward.

10

**Answer and Counter-Claim of Defendant,  
Isaac L. Evans.**

Filed Dec. 20, 1916.

IN CHANCERY OF NEW JERSEY.

20

*Between*

ROBERT C. LOCKWARD,  
*Complainant.*

*and*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants.*

*On Bill, &c.*

*Answer and  
Counter-  
claim of  
defendant,  
Isaac L.  
Evans.*

30

The answer of defendant, Isaac L. Evans, and his counter-claim against complainant and John C. Moore, a third party:

This defendant answering the bill of complaint, says that:

1. He admits paragraph 1 of the complaint.
2. He admits that the officers of defendant corporation are as stated in paragraph 2 of the complaint; but avers that for several years last

40

*Answer and Counter-claim of Isaac L. Evans.*

past the directors of said corporation have been and now are complainant, this defendant, and one John C. Moore. This defendant admits that prior to April 10, 1916, he was the owner of 305 shares of the capital stock of said corporation; that John C. Moore was the owner of 50 shares; that complainant was the owner of 290 shares, and that Lida L. Lockward, the wife of complainant, was the owner of 5 shares; and this defendant avers that the stockholders and stock ownership are the same at the present time, and denies the purchase by complainant from John C. Moore of his said shares of stock.

3. He denies paragraph 3 of the complaint; and alleges and charges the truth to be that on or about June 14, 1913, he entered into a certain agreement with the said John C. Moore wherein and whereby, among other matters, the said John C. Moore, for the consideration therein set forth, did give to this defendant the first privilege or option of purchasing the 50 shares of the capital stock of the Lane & Lockward Company then owned by the said Moore, and wherein said Moore did agree that he would not at any time transfer or assign said shares of stock to any person until after he had first, in writing, offered them for sale to this defendant at the same price which other persons, in writing, might have offered for the same, to which agreement this defendant begs leave to refer for greater certainty if it be necessary so to do. This defendant avers that the complainant had full knowledge of said agreement; and on or about November 1, 1915, by collusion with said John C. Moore, and contriving to defraud this defendant, made a pretended offer in writing for

*Answer and Counter-claim of Isaac L. Evans.*

said 50 shares of stock of the sum of \$50,000; that at the request of this defendant, and on or about November 2, 1915, complainant withdrew said pretended offer.

4. Complainant and this defendant thereupon mutually agreed that neither of them would make an offer for said shares of stock, belonging to said Moore, nor purchase the same from him directly or indirectly. 10

5. He is informed and believes it to be true, and therefore expressly charges that on or about November 29, 1915, the said Moore, in violation of the terms of said agreement of June 14, 1913, pretended to sell, and the complainant, in violation of the terms of said agreement of June 14, 1913, and of his said agreement with this defendant, pretended to buy said 50 shares of stock, which pretended sale this defendant avers was made without consideration, in violation of the rights of this defendant and by collusion between the complainant and the said John C. Moore; that the said complainant is not a *bona fide* purchaser for value of said shares of stock, and that the purpose of said pretended sale was that complainant might acquire ownership and control of the stock of said corporation to the exclusion of this defendant. 20 30

6. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4 of the complaint, and therefore, denies the same.

7. This defendant has no knowledge sufficient to form a belief as to allegations of paragraph 5 concerning the preparation of a new certificate of capital stock, admits the request of complainant that this defendant sign a new certificate for 50 shares, and the refusal of this 40

*Answer and Counter-claim of Isaac L. Evans.*

defendant so to do and denies the remainder of said paragraph.

8. Defendant denies the allegations of paragraph 6 of the complaint.

10 9. This defendant denies that the bill of complaint in this cause presents any equity to give the court jurisdiction to hear and determine the matter; that complainant has ample and complete remedy at law, and that this objection is made for the purpose of taking advantage thereof on or before the hearing of the case, and that the court will be asked to pass upon this objection before hearing the merits of the case.

20 By way of counter-claim against the complainant and John C. Moore, a third party, this defendant says, that,

30 1. He repeats the allegations of paragraphs 3, 4 and 5 of the answer, and further avers that he has requested said Moore and the complainant to cancel said fraudulent transfer or to cause said 50 shares of stock to be transferred to said Moore, which request has been refused. He was informed that the consideration of the pretended sale by said Moore of said 50 shares of stock to the complainant was the sum of ten thousand dollars (\$10,000), which amount, this defendant thereupon tendered to said Moore and complainant, both of whom refused to receive the same; and ever since; this defendant has at all times been ready to pay said amount for said 50 shares, and now brings the same into court.

*Answer and Counter-claim of Isaac L. Evans.*

This defendant therefore prays

1. That the said complainant and the said John C. Moore may answer this counter-claim without oath, and each statement herein made, and that a writ of subpoena may issue to the said Moore to answer this counter-claim and to stand to and abide by such decree as the court may make in the premises. 10

2. That said pretended sale by the said John C. Moore to the complainant of said 50 shares of stock may be set aside and declared null and void.

3. That upon the payment by this defendant to said John C. Moore or complainant of the sum of ten thousand dollars (\$10,000), the complainant or the said Moore may be decreed to execute and deliver to this defendant a proper transfer of said 50 shares of stock, now held by them or either of them. 20

4. That this defendant may have such other or further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

CHURCH & HARRISON,  
*Solicitors for and of Counsel*  
*with Defendant, Isaac L. Evans.* 30

*Answer of Lane & Lockward Company.*

**Answer of Defendant, Lane & Lockward  
Company.**

Filed Dec. 20, 1916,

IN CHANCERY OF NEW JERSEY.

10

*Between*

ROBERT C. LOCKWARD,  
*Complainant,*

*and*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants.*

*On Bill, &c.*

*Answer of  
defendant,  
Lane &  
Lockward  
Company.*

20

The answer of defendant, Lane & Lockward Company.

This defendant answering the bill of complaint says that:

1. It admits paragraph 1 of the complaint.

2. It admits that its officers are as stated in paragraph 2 of the complaint; but avers that for several years last past the directors of this defendant have been and now are complainant, defendant Isaac L. Evans, and one John C. Moore. This defendant further says that its registry and transfer books show that the stockholders and stock ownership are the same at the present time as set forth in the bill of complaint prior to April 10, 1916. This defendant has no knowledge or information sufficient to form a belief as to the other allegations of paragraph 2 of the complaint and therefore denies the same.

40

*Answer of Lane & Lockward Company.*

3. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 3 of the complaint and therefore denies the same.

4. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4 of the complaint and therefore denies the same. 10

5. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 5 of the complaint and therefore denies the same.

6. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 6 of the complaint and therefore denies the same.

CHURCH & HARRISON, 20

*Solicitors for and of Counsel with Defendant,  
Lane & Lockward Company.*

30

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*Order Permitting New Matter.***Order.**

Filed Dec. 30, 1916.

## IN CHANCERY OF NEW JERSEY.

10

*Between*ROBERT C. LOCKWARD,  
*Complainant,**and*ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY, a cor-  
poration,*Defendants.**On Bill, etc.  
Order Per-  
mitting a New  
Matter to be  
Set Up in  
Replication.*

20

This matter being opened to the court by Andrew Van Blarcom, of counsel with complainant, and it appearing that the answer of Isaac L. Evans sets up defenses not anticipated in the bill;

30

IT IS THEREUPON, on this 18th day of December, 1916, for good cause shown, ordered, that the complainant have leave to file a replication setting up new matter to meet the defenses not anticipated in the bill.

E. R. WALKER,  
C.

Respectfully advised,

FREDERIC W. STEVENS,  
V. C.

40

*Replication and Answer of Robert C. Lockward.*

**Replication and Answer of Robert C.  
Lockward.**

Filed Dec. 30, 1916.

IN CHANCERY OF NEW JERSEY.

*Between*

ROBERT C. LOCKWARD,  
*Complainant,*

*and*

ISAAC L. EVANS and IANE &  
LOCKWARD COMPANY,  
*Defendants.*

*On Bill, etc.*

*Replication  
and Answer  
of Robert C.  
Lockward to  
the Answer  
of Isaac L.  
Evans.*

10

In reply to the defenses stated in paragraphs three, four and five of the answer and not anticipated in the bill of complaint, complainant by leave of the court says that:

20

1. He admits that an agreement was entered into between the said Isaac L. Evans and John C. Moore, on June 14th, 1913, a true copy of which is annexed to this replication and answer and made part hereof. Other than admitting the making and execution thereof, this complainant denies the allegations of the third paragraph of the answer.

30

2. This complainant denies the allegations of the fourth paragraph of the answer.

3. This complainant denies that the said John C. Moore in violation of said agreement, sold said fifty shares of stock to him, and denies that said sale was through fraud and collusion, but says that the same was a *bona fide* and absolute sale and purchase. That before the purchase

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*Replication and Answer of Robert C. Lockward.*

of the said shares from the said John C. Moore and on or about November 29th, 1915, said shares of stock were offered to the said Isaac L. Evans, for the sum of \$10,000, at the same price which this complainant paid for them, and the said Isaac L. Evans was advised by the said  
 10 John C. Moore that he, the said John C. Moore had an offer in writing for said shares, at said sum, and that the same were thereupon offered to the said Isaac L. Evans as aforesaid.

As to the counter-claim contained in said answer, complainant says that:

1. He repeats the allegations of the foregoing replication and makes the same part of his answer to said counter-claim.

20 2. He further denies that the said Isaac L. Evans requested him to cancel said alleged fraudulent transfer or to cause said fifty shares of stock to be transferred to said Moore. He denies that said Isaac L. Evans tendered to him the sum of \$10,000, or any other sum, and therefore denies that he refused to receive the same.

30 3. He denies that the said Isaac L. Evans has been at all times ready to pay said sum for said shares.

4. As to the negotiations and dealings between the said Isaac L. Evans and the said John C. Moore, this complainant has no knowledge or information sufficient to form a belief and therefore denies the same.

5. Said agreement made between said John C. Moore and Isaac L. Evans is void, illegal, against public policy and not binding upon the parties.

*Replication to Answer of Lane & Lockward Co.*

This complainant therefore prays that the said counter-claim may be dismissed.

RAYMOND, MOUNTAIN, VAN BLARCOM  
& MARSH,

*Solicitors of Complainant.*

A true copy of the agreement herein above referred to in paragraph 1 is printed as Exhibit D. 6 on page 108. 10

**Replication to Answer of Lane & Lockward  
Company.**

Filed Dec. 30, 1916.

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IN CHANCERY OF NEW JERSEY.

*Between*

ROBERT C. LOCKWARD,  
*Complainant,*

*vs.*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants.*

*On Bill, etc.*

*Replication to  
Answer of  
Lane & Lock-  
ward Com-  
pany.* 30

The complainant joins issue on the answer of the defendant, Lane & Lockward Company.

RAYMOND, MOUNTAIN,  
VAN BLARCOM & MARSH,  
*Solicitors of Complainant.*

340

*Answer of John C. Moore.*

**Answer of John C. Moore.**

Filed Dec. 30, 1916.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ROBERT C. LOCKWARD, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ISAAC L. EVANS and LANE &amp; LOCKWARD COMPANY, <i>Defendants.</i></p>	}	<p><i>On Bill, etc.</i></p> <p><i>Answer of</i> <i>John C. Moore</i> <i>to Counter-</i> <i>claim of Isaac</i> <i>L. Evans.</i></p>
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20 The answer of John C. Moore to the counter-claim of Isaac L. Evans, one of the defendants in the above stated cause.

This defendant answering the counter-claim, says that:

30 1. He admits that on the 14th day of June, 1913, he entered into an agreement with the said Isaac L. Evans, a true copy of which is annexed hereto and made part hereof. Other than the making of the agreement as aforesaid, he denies the allegations of the third paragraph of the answer of said Isaac L. Evans to the bill of complaint.

2. This defendant has no knowledge or information sufficient to form a belief of the matters contained in the fourth paragraph of the answer which was made part of the counter-claim and therefore denies the same.

40 3. This defendant denies the allegations of the fifth paragraph of the answer which is made part of the counter-claim, but says that on the

*Answer of John C. Moore.*

10th day of April, 1916, he sold the fifty shares of the capital stock of said Lane & Lockward Company to the said Robert C. Lockward for the sum of \$10,000; that said sale was an absolute and *bona fide* sale.

4. This defendant further answering says that on or about November 29th, 1915, he offered to the said Isaac L. Evans, said fifty shares of stock at the price of \$10,000 and advised the said Isaac L. Evans that he had received an offer in writing for said shares at said price of \$10,000 and advised the said Isaac L. Evans that he had received an offer in writing for said shares at said price, and the said Isaac L. Evans refused and neglected to purchase the same in accordance with the terms of the said agreement hereto annexed, and thereupon this defendant sold the same to the said Robert C. Lockward as above mentioned.

5. This defendant denies that the said Isaac L. Evans requested him to cancel said transfer or to cause said fifty shares of stock to be transferred to him.

6. This defendant denies that the said Isaac L. Evans has tendered the sum of \$10,000 or any other amount to him.

7. This defendant has no knowledge or information sufficient to form a belief, concerning the matters of the first paragraph of the counterclaim with respect to the negotiations and dealings between the said Isaac L. Evans and Robert C. Lockward, and therefore denies the same.

8. That said agreement made between the said Isaac L. Evans and this defendant is void, illegal, against public policy, and not binding upon this defendant.

*Answer of John C. Moore.*

This defendant therefore prays to be hence dismissed with his costs of suit in this behalf sustained.

RAYMOND, MOUNTAIN,  
VAN BLARCOM & MARSH,  
*Solicitors of Defendant,*  
*John C. Moore.*

10

A true copy of the agreement herein above referred to in paragraph 1 is printed as Exhibit D. 6 on page 108.

20

30

40

*Order of Reference.*

**Order of Reference.**

Filed Jan. 2, 1917.

IN CHANCERY OF NEW JERSEY.

*Between*

ROBERT C. LOCKWARD,  
*Complainant,*

*and*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants.*

*On Bill, etc.*

*Order of Ref-  
erence to Vice-  
Chancellor.*

10

This matter being opened to the court by Raymond, Mountain, Van Blarcom & Marsh, solicitors and of counsel with complainant, and Church & Harrison, solicitors and of counsel with the defendant, consenting thereto: 20

IT IS THEREUPON, on this 16th day of January, nineteen hundred and seventeen, ordered that the above stated cause be referred to Hon. John E. Foster, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and report thereon to him, and advise what order or decree should be made therein. 30

We hereby consent to the making of the foregoing order.

CHURCH & HARRISON,  
*Solicitors and of Counsel  
with the Defendant.*

40

*Robert C. Lockward, direct.*

IN CHANCERY OF NEW JERSEY.

*Between*

ROBERT C. LOCKWARD,  
*Complainant,*

*and*

ISAAC L. EVANS, *et al.*,  
*Defendants.*

10

Transcript of testimony and proceedings in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, May 2nd, 1917, at 10 A. M.

20 APPEARANCES:

Mr. Andrew Van Blarcom, of Raymond, Mountain, Van Blarcom & Marsh, for Complainant.

Mr. J. Henry Harrison, of Church & Harrison, for Defendants.

ROBERT C. LOCKWARD, complainant, sworn.

*Direct examination* by Mr. Van Blarcom.

30

Q You live in Caldwell? A I do.

Q You are connected with the Lane & Lockward Company? A Yes.

Q That is a corporation of this state? A Yes.

Q You are one of the stockholders? A Yes.

Q How long have you been connected with the company? A About twelve years.

Q You are what officer? A Secretary.

40 Q You know Mr. John C. Moore? A Yes.

*Robert C. Lockward, direct.*

Q He is an employee of the company, is he not? A Yes.

A Salesman? A Yes.

Q How long has he been with the company?

A Ever since it was incorporated.

Q And in the month of April, 1916, did you purchase fifty shares of stock from him? A I did. 10

Q Is this the certificate? A It is.

Q Where did you receive that certificate?

A In my house.

Q Who signed the transfer on the back? A Mr. Moore.

Q Your wife's signature appears there as a witness? A Yes.

Q After you received the certificate what did you do with it? A I took it to the bank. 20

Q What did you do then?

*Court.* Did you attempt to have it transferred to you?

*Witness.* Yes.

Q What did you do about that? A I made out a new certificate in the stock book and offered it to Mr. Evans for his signature.

*Court.* What position did Mr. Evans hold? 30

*Witness.* President and treasurer, and he said he would sign it in the morning, and then in the morning he refused to sign it.

Q And since that time have you ever received the certificate? A No.

Q Did he give any reason for not signing it? A He said he didn't think the Court of Chancery would allow him to sign it. 40

*Robert C. Lockward, cross.*

*Mr. Van Blarcom.* I offer the certificate in evidence.

(Marked Exhibit C. 1.)

Q What office did Mr. Evans hold? A President and treasurer of the Lane & Lockward Company.

10

*Court.* And you were the secretary?

*Witness.* Yes.

Q Who signed the certificates? The By-Laws would be the best evidence, but I think there is no dispute about that. A The president and treasurer.

*Cross examination by Mr. Harrison.*

Q When was the Lane & Lockward Company organized? A I don't remember, for sure.

20

(It is admitted it was organized December, 1905.)

Q When did you have your first talk with Mr. Moore relative to the purchase by you of his shares of stock? A I cannot say for sure on that; it was sometime before this first option—sometime before the option was given.

30

*Court.* You haven't referred to any option yet. You referred to the purchase of the stock.

Q What option do you refer to? A When I made him the offer.

Q Is that the offer of \$10,000 you referred to? A Yes.

Q Is that the price for which you purchased the stock? A Yes.

Q Was that offer in writing? A Yes.

40

Q When was the offer made?

*Robert C. Lockward, cross.*

*Mr. Van Blarcom.* I don't know that this is cross examination. I am willing to have the whole case go in on the complainant's case, if you think it is proper.

*Court.* You opened the door to this extent: you asked if he purchased the stock, and he said he did. I will allow it. Part of it is really the defendant's case. 10

*Mr. Van Blarcom.* The paper is the best evidence. I have it here, if you wish it. This paper is produced by John C. Moore.

Q From a paper produced by Mr. Moore, dated November 1, 1915, can you by looking at that paper, refresh your memory and tell when the offer was made? A It was made November 1, 1915.

*Court.* By this letter which you are looking at? 20

*Witness.* Yes.

*Mr. Van Blarcom.* I offer it in evidence. (Marked Exhibit C. 2.)

Reading "JOHN C. MOORE,

Caldwell, N. J. November 1 1915.

J. C. Moore,

Caldwell, N. J.

Dear Sir: 30

I hereby offer you Ten Thousand for your 50 shares of Lane and Lockward Co. stock you now hold.

(Signed) Robert C. Lockward."

Q Is that the only offer you made to Mr. Moore for his stock? A No, I made him another offer.

Q After this? A No, before this—I wouldn't say whether it was before or after. 40

*Robert C. Lockward, cross.*

Q Was it upon this offer that you presumed to buy the fifty shares of stock represented by the certificate in evidence as Exhibit C. 1? A It was.

10 *Mr. Harrison.* I ask the complainant to produce withdrawal offer, under date of November 2, 1915.

*Mr. Van Blarcom.* That is not the withdrawal of this offer, because your answer alleges that the offer withdrawn was the \$50,000 one. I produce paper from Mr. Moore.

Q I show you paper writing under date of November 2, 1915, addressed to John C. Moore, and ask you if the signature "Robert C. Lockward" affixed to that is yours? A Yes.

20 Q Have you in your possession any offer that you made to Mr. Moore, or copy of any offer? A No.

Q Did you make an offer in writing to Mr. Moore at any other time? A I did.

Q When? A November 1.

*Mr. Harrison.* I will ask the complainant to produce it.

30 *Court.* Beside the one you identified as of November 1?

*Witness.* Yes, they were both made on the same day.

*Mr. Van Blarcom.* Where is it?

*Witness.* That was destroyed.

*Court.* Is Mr. Moore a party to this proceeding?

40 *Mr. Harrison.* Yes, he was brought in as a third party and has filed an answer and reply.

*Robert C. Lockward, cross.*

Q Was that other offer of November 1, 1915, for the consideration of \$50,000? A It was.

Q And was that offer drawn and prepared at the same time that the offer of \$10,000 identified as Exhibit C. 2, which I show you? A No, this was drawn first; this was drawn prior to that, that same date. 10

Q By "this" you refer to Exhibit C. 2, being the \$10,000 offer? A Yes.

Q What part of the day was Exhibit C. 2 drawn? A I think likely in the afternoon, but I am not sure.

Q And on what part of the day was the \$50,000 offer drawn? A In the evening.

Q Did that \$50,000 offer relate to the purchase of the same shares of stock as Exhibit C. 2? A It did. 20

*Court.* Why did you offer \$10,000 for the same number of shares in one offer and \$50,000 in the other?

*Witness.* The second offer of \$50,000 was a fake offer, that is all.

On that first offer I would like to add a little more to that—on the fake offer.

*Mr. Van Blarcom.* Explain the circumstances. 30

*Witness.* It was really a fake offer, but I was to pay Mr. Moore \$50,000, and he was to allow me a rebate.

Q Of how much? A Of \$30,000.

Q \$30,000? A \$40,000 I mean.

*Mr. Van Blarcom.* The real consideration was \$10,000?

*Witness.* Yes, the real consideration was \$10,000. 40

*Robert C. Lockward, cross.*

Q Where were these offers prepared? A The \$50,000 offer was prepared in Mr. Brandley's office.

Q You refer to Walter G. Brandley, an attorney at law at Caldwell, New Jersey? A Yes.

10 Q Were you there when the offer was prepared? A I was.

Q Who dictated the offer? A I don't know whether anybody; as I remember it, Brandley got it up himself.

Q I show you a paper writing under date of November 1, 1915, purporting to be signed by John C. Moore, addressed to Isaac L. Evans, with an envelope also addressed to him, and ask you if you have ever seen these papers before? A I should imagine that that is the same one.

20 Q That was the letter that was prepared in Mr. Brandley's office, signed by Mr. Moore and given to Mr. Brandley? A Yes.

*Mr. Harrison.* I offer that in evidence for identification.

(Marked Exhibit D. 2 for identification.)

Q When was the copy of the \$50,000 offer destroyed, and by whom? A I think it was the third of November, but I am not sure on that.

30 *Court.* Who destroyed it?

*Witness.* I did.

Q Who was present when you destroyed it? A Nobody that I know of.

Q Where was it destroyed? A I cannot say that for sure, but I got it from Mr. Brandley's office.

Q Was any money or other consideration paid to Mr. Moore on November 1, 1915?

40 *Mr. Van Blarcom.* I object.

*Robert C. Lockward, cross.*

Q How much did you pay for this stock, Mr. Lockward? A \$10,000.

Q When? A I don't remember the date that I paid it.

Q About? A I gave him a note for it; of course, Mr. Moore couldn't transfer the stock, or couldn't buy the stock, or I couldn't buy it, until he notified Mr. Evans, giving him his opportunity to buy it. 10

*Mr. Van Blarcom.* I have the note here produced by Mr. Moore for the \$10,000, from Mr. Lockward to Mr. Moore. (Note handed to Mr. Harrison.)

Q I show you a paper writing under date of April 10, 1916, purporting to be signed by you, and ask you if that is the promissory note to which you have just referred? A That is it. 20

Q And when was that delivered to Mr. Moore? A April 10.

Q The date of the paper itself? A Yes.

*Mr. Van Blarcom.* I offer it in evidence on the part of the complainant.

(Marked Exhibit C. 3.)

"Caldwell, Essex County, New Jersey.

April 10, 1916. 30

On demand, I, Robert C. Lockward, agree to pay John C. Moore \$10,000 for fifty (50) shares of stock of Lane & Lockward Co., a corporation of New Jersey, the same stock now standing in his name on the stock book of said Co. The said John C. Moore agrees to credit to the note of the said Robert C. Lockward the amount of any dividends that might be paid to him before the stock is transferred on the books of Lane & Lockward Co. to Robert C. Lockward. 40

*Robert C. Lockward, cross.*

If the Mutual Tobacco Co. takes up the option which is about to be signed by Robert C. Lockward and James C. Tansy, the said John C. Moore is to get the same proposition per share as Robert C. Lockward for the fifty shares now being transferred to Robert C. Lockward from John C. Moore.  
 10 (Signed) ROBERT C. LOCKWARD.

Witness:

LIDA L. LOCKWARD.

May 15, 1916.

Credit By cash on note .	\$750.
March 26, 1917, credit by check on note	300."

Q What does this reference in Exhibit C. 3,  
 20 being the so-called note, to the Mutual Tobacco Co. option have? A I was to give Mr. Tansy an option on my stock and Mr. Moore's stock; Mr. Moore's stock subject to the transferring to me.

Q Who was Mr. Tansy? A A representative of the Mutual Tobacco Co.

Q What was the Mutual Tobacco Co.? A A fake.

30 *Court.* What was the business of the Lane & Lockward Company?

*Witness.* Manufacturing tobacco and cigars.

*Court.* Where was the business carried on?

*Witness.* At Caldwell, in this county.

*Court.* What was the par value of the shares of stock?

40 *Witness.* \$100.

*Robert C. Lockward, cross.*

Q So that upon the sale by you of your stock and the Moore stock to the Mutual Company, Moore was to get the same amount per share that you received from the Mutual Company or from Tansy? A No, he was to get it from me.

*Court.* He was to get the same amount?

*Witness.* Yes, the same amount per share. 10

*Court.* If you were to receive \$50 advance per share on the stock from the Mutual Company, Mr. Moore on his fifty shares was to receive a like amount?

*Witness.* Yes.

Q Had you on April 10, 1916, or before that, given an option to the Mutual Company or Tansy for the purchase of your stock? A I had jointly.

Q Jointly with whom? A Mr. Evans. 20

Q When was that option given? A I don't remember the date.

*Mr. Van Blarcom.* Isn't it here.

*Witness.* It had run out before this option.

*Court.* Did it run out before this note was given?

*Witness.* Yes, it had run out before this note was given. 30

*Mr. Van Blarcom.* Have you your option with you?

*Witness.* I haven't.

Q Have you a copy of the option? A No, I couldn't find it; I looked for it last night, but I couldn't find it.

Q Could you by reference to the paper which I show you, purporting to be signed by R. C. Lockward and I. L. Evans, tell whether that is a 40

*Robert C. Lockward, cross.*

copy of the option to which you have just referred? A No, I wouldn't say for sure whether that is the paper or not; it may be, except the date; I am not sure of the date.

Q So far as you can tell from an examination of that paper, it is a copy of the original  
10 option with the exception of the date? A Yes.

*Court.* And you are not sure of the date?

*Witness.* Yes.

*Court.* The date may be correct?

*Witness.* For all I know.

Q Did Tansy or the Mutual Company ever complete the option for the purchase of your stock? A It did not.

Q With reference to this credits of cash on  
20 the note, in what way were they paid? A One was a credit of a dividend; that other one was my personal check.

*Court.* \$750 was the dividend?

*Witness.* Yes.

Q The \$750 item was the dividend which you had received on the Moore stock? A Yes.

Q Was that the dividend declared by the corporation on May 1, 1916? A It was.

Q I will change that—declared April 6, 1916,  
30 and payable May 1, 1916? A It was.

*Court.* Was that dividend paid to you on the Moore stock?

*Witness.* No, paid to Mr. Moore and credited on the note.

Q On what day did you present to Mr. Evans the Moore certificate, Exhibit C. 1? A I don't remember just the date.

Q How long after the delivery of the certificate by you to Mr. Moore was it presented to  
40 Evans? A A very short time.

*Robert C. Lockward, cross.*

Q A period of days, weeks or months? A Days, I should say.

Q The power of attorney on the back appears to be dated April 10, 1916; can you from that fix the time when you presented it to Mr. Evans?

A I cannot.

Q Where did you receive this certificate marked Exhibit C. 1? A In my house. 10

Q Where did you give Mr. Moore the note marked Exhibit C. 3? A In my house.

Q When? A April 10, the same date as the stock.

Q And the same time of day as the stock? A Yes.

Q What time of the day was it you presented the certificate to Mr. Evans? A In the afternoon. 20

Q Did you have a conversation with him at the time of the presentation? A I don't think I did, that is, of any length.

Q I mean did you have any conversation with him at the time you presented it to him? A Only, as I remember it, only I told him I had bought Mr. Moore's stock and would like to have him transfer the shares.

Q And he put you off until the next morning? A Yes. 30

*Court.* Did you have a new certificate made out at that time?

*Witness.* I did.

Q Is that here? A No, it is not.

*Mr. Van Blarcom.* There is no dispute about that.

*Court.* It might give the date.

*Mr. Harrison.* We can stipulate as to that, and produce it later if it becomes necessary. 40

*Robert C. Lockward, cross.*

Q When you saw him the following morning, did you have any conversation with him? A I don't remember as to that.

10 *Court.* You did have some conversation because he told you he wouldn't sign it because the Court of Chancery wouldn't let him.

*Witness.* I am not sure whether that was the next morning or not.

Q So on the day you presented the certificate or the following morning he said he didn't think the Court of Chancery would let him sign it? A Yes.

Q Is that all he said? A I am not sure whether that is all he said at that time or not.

20 Q Didn't he, in fact, ask you why you went back on your agreement with him? A No, not that I know of; I had no agreement with him.

*Court.* Did he at this time and in this conversation refer to the fact that you had gone back on your agreement with him?

*Witness.* No, he did not.

30 Q Didn't he in this conversation refer to the original offer of Moore to him to sell the stock for \$50,000? A He did not.

Q Didn't he in that conversation last referred to make some reference to the withdrawal by you of the \$50,000 offer to Moore? A I don't think so.

Q Didn't he at that same time refer to the gentlemen's agreement, as he then termed it, between you and him, relative to the purchase of Moore's stock? A Not at that time.

40 Q When did he refer to that? A I think that was later on.

*Robert C. Lockward, cross.*

Q How much later? A I wouldn't say for sure, some little time after that.

Q Did you not also offer as an excuse for the purchase of the Moore stock, that he (Evans) had some kind of side agreement with the Mutual Company? A I did.

*Court.* In this conversation on that morning? 10

*Witness.* No, I don't think there was anything said that morning except he didn't think that he would be allowed to sign it.

Q Did he say why he didn't think he would be allowed to sign it by the Court of Chancery?

A As president of the company; that is all that I remember now.

Q You didn't have any action pending at that time in the Court of Chancery in which you, Mr. Evans or the company was concerned, did you? A No. 20

Q Did you think it was rather unusual that he should offer such a flimsy excuse as that? A Yes, I thought it was.

Q Did you talk to him about it or analyze the excuse with him at all? A No, not at that time. There wasn't anything said, I don't think, at that time, outside of that. 30

Q How long did your conversation last on that occasion? A Three or four minutes possibly.

Q What became of the certificate you handed to Evans that morning, the new certificate? A It is still in the stock book.

Q Are you familiar with the correspondence consisting of three or four letters, from both Mr. Evans and Mr. Moore, which passed between them? A I am not. 40

*Robert C. Lockward, re-direct.*

Q Were those letters, or copies of them, shown to you? (Witness shown letters.) A They were not; possibly one was, but I wouldn't say for sure.

Q Which one? A I don't know.

Q What did it refer to?

10 *Mr. Van Blarcom.* I think we are going into the defendant's case.

*Court.* How is this cross examination? Mr. Blarcom hasn't touched on this phase of it.

*Mr. Harrison.* I merely wished the letters identified.

*Court.* You may do that.

20 Q I ask you if you can identify any of the letters which I show you, from Evans to Moore or Moore to Evans, as having seen them? A I have never seen that one; the letter dated November 22, 1915, from Mr. Isaac L. Evans to Mr. Moore, I have never seen. I don't think I have seen any of them.

*Court.* A number of letters passing between Evans and Moore, and the witness states that he does not recall having seen them before.

30 *Re-direct examination by Mr. Van Blarcom.*

Q After you gave notice of the offer of \$50,000, you did sign a paper withdrawing the offer? A I did.

Q Who wrote that out? A Mr. Harrison.

Q Where was it signed? A In our office.

Q And was Mr. Evans there? A Yes.

40 Q That referred to what offer, that withdrawal? A The offer of \$50,000.

*Robert C. Lockward, re-direct.*

Q Did you ever withdraw the offer of \$10,000? A I did not.

Q And in your option to the Mutual Tobacco Company at what price per share was the stock to be sold? A I don't exactly remember what it was, but with the money—the consideration and the stock, consideration of the Mutual Tobacco Company, it would have brought it up somewhere around \$300. 10

Q And you and Mr. Evans had a mutual option for the disposal of your shares and his? A We had.

Q Was that to Tansy or the Mutual Tobacco Company? A To Tansy.

Q He represented the Mutual? A He did.

Q You assumed the Mutual Tobacco Company was buying the stock; when did you ascertain that that was so? A Because they were paying so much higher price for the stock. 20

Q When did you ascertain that? A I cannot say.

*Court.* How long after your transaction with Mr. Moore?

*Witness.* Some little time.

Q Your option ran for when? A For four months. 30

*Court.* Did you find that out before the option expired or after, that the Mutual Company was no good.

*Witness.* We got an inkling of it before the option—

Q Did you get absolute information before or after? A After.

*Court.* When did your option expire? 40

*Robert C. Lockward, re-direct.*

*Witness.* Four months from the date. That is, only a copy of the option and the date has been written in.

Q In that option that you and Mr. Evans gave, was Mr. Moore's stock mentioned at all?

A It was not.

10

*Court.* At the time you gave that option, you did not have the stock of Mr. Moore transferred to you?

*Witness.* No.

*Court.* Did you have an option at that time to purchase it from him, or did you include it in the option you gave to Mr. Evans?

*Witness.* No.

20 Q Had you and he talked about the sale to the Mutual Company? A Yes.

Q What had been said between you on that subject? A That we were to sell out to the Mutual and both receive the same price—same consideration for our stock, share and share alike, that is, in proportion to our shares.

Q The number of shares you held? A Yes.

Q Your wife held some few shares? A Yes, but that was in my option.

30 Q You testified on cross examination about a conversation with Mr. Evans, in which something was said about his getting more out of this than you did? A This Mr. Tansy came over to see me—

Q What was said between you and Mr. Evans in respect to that? A I just cannot remember.

Q You testified in connection with the purchase of Mr. Moore's stock, that something was said between you and Evans why you did that, and you said because he got more out of it than

40

*Robert C. Lockward, re-cross.*

he should have, or words to that effect? A Yes, Mr. Evans was to get \$10,000 more stock of the Mutual Company than I was, for the consideration of getting my signature to the joint—

Q Did you call that to Evans' attention? A I did.

Q From where was he to get that extra compensation? A From Mr. Tansy. 10

Q Was that understood between you and Evans that he was to get that? A No, not until Mr. Tansy told me.

Q How long has Mr. Evans been connected with the company? A Very shortly after it was incorporated.

Q Was your father living at that time? A Yes, he was.

Q He was a large stockholder in the company? A Yes, he held the majority of the stock. 20

*Re-cross examination by Mr. Harrison.*

Q Didn't both you and your father, and Mr. Lane receive a certificate of 325 shares each at the time of the incorporation? A Yes.

Q In this joint option which you and Mr. Evans signed, you had included your wife's stock? A Yes. 30

Q You did not then have an assignment of her certificate for her stock? A No, I did not.

Q At that time you had received from Moore an option for the sale of his stock, hadn't you? A I am not sure about that.

Q You know that the Lockward offer to Moore was November 1, 1915? A Yes.

Q You know that the joint option signed by you and Mr. Evans was sometime in December, 40

*Robert C. Lockward, re-cross.*

1915, don't you? A I think it was, but I cannot say for sure.

Q Under that joint option you and Mr. Evans were to receive the same amount in cash and in stock of the Mutual Company? A Yes.

10 *Mr. Van Blarcom.* He said in proportion to their holdings.

Q Why did you not include the Moore stock in the option which you gave to Tansy or the Mutual Company? A Mr. Evans said, "Let Moore shift for himself."

Q And you agreed with him? A No, I did not.

Q But yet you did not include it? A No, I did not.

20 Q Did you know that Mr. Moore shortly after the giving of the joint option also gave an option to the Mutual Company? A I don't know as I ever saw the option.

*Court.* Did you know of it?

*Witness.* Yes, I knew of it by hearsay.

Q Did you know of the terms of that option? A No, I cannot say I did.

30 Q Didn't you know that Mr. Moore was to receive the same consideration per share that you and Mr. Evans were to receive? A No, I did not.

Q Didn't you ever see a copy of the option of Mr. Moore? A I don't think that I did, to read it; I have seen the copy, of course, but not to read it.

Q Do you know when Mr. Moore gave that option? A I do not.

40 Q Did he talk with you about giving it? A He certainly did.

*Robert C. Lockward, re-cross.*

Q And you urged no objection to the giving of the option by him to the company? A I advised him to do it; he gave the option knowing that I had an option on it.

*Court.* He gave it, then, subject to your right to acquire it first and turn it over to the Mutual Company, if they exercised their option? 10

*Witness.* That was agreed between Mr. Moore and myself.

Q The agreement to which you now refer is contained in the so-called note, Exhibit C. 3? A No, it is not; there were two options given to the Mutual Tobacco Company.

Q By Moore? A No, there was one given by Moore and one given by myself. There were two given by myself and one by Mr. Evans and myself. 20

*Court.* Then there was one from you and Evans jointly, and from you personally, and one from Mr. Moore?

*Witness.* Yes.

Q Did you join with Mr. Moore in his option? A I did not.

Q Was the option for fifty shares of the Moore stock given by you to the company, given after Moore's option or before? A After Moore's option had expired; his expired about the same time that our first one did. 30

Q So you gave a renewal option? A No, a new option.

Q It was a new option for fifty shares? A It was a new option for my stock and Moore's stock.

Q Can you fix the time of that new option, as you call it? A No, I cannot fix the time, 40

*Robert C. Lockward, re-cross.*

but it was very shortly after the first option expired, within a few days.

Q You had received from the Mutual Company a form of option providing for a payment to you of \$200 per share and a certain amount of Mutual stock? A I don't just remember the amount, but something like that.

10 Q Did not the joint option which you and Evans signed provide for a greater consideration to both of you than the original option submitted to you, which you had signed, but which was not delivered? A I think so—yes, I know it was, but the first option was never delivered to Tansy, for the Mutual Company; I signed it, but it was never delivered.

20 *Court.* In your reference to Tansy, I take it that he was merely the representative of the Mutual Company?

*Witness.* Yes.

*Court.* Not acting personally, but for the company?

*Witness.* He was connected with it, but he was acting for the Mutual Company.

30 Q I show you an option dated November 18, 1915, and ask you if that is signed by you? A Yes.

Q Is that the original option which you signed to the Mutual Company? A It was an option that was signed, but was never delivered.

Q I show you an option dated November 18, 1915, providing for an option of five shares of stock of the Lane and Lockward Company; is that Mrs. Lockward's signature? A Yes.

Q Lida L. Lockward? A Yes.

40 *Mr. Harrison.* I ask to have that option marked for identification.  
(Marked Exhibit D. 5 for identification.)

*Robert C. Lockward, re-cross.*

Q To whom did you give this option? A Mr. Evans, for the Mutual Tobacco Company; he acted for Tansy, Mr. Evans did.

Q Didn't he act for you? A Partly, I guess.

Q Whom did you have as attorney then? A Nobody.

Q Wasn't Mr. Thomas C. Provost your attorney? A No, he was not.

Q Didn't he to your knowledge work with me in getting a better consideration for your stock than contained in the original option? A Not that I know of.

Q Which have just been identified by you? A Not that I know of.

Q Didn't you subsequently sign with Mr. Evans a joint option which provided for a greater consideration than the two options just marked for identification? A I did.

Q Do you know in what way or by what means that better consideration was obtained? A I do not; Mr. Evans is the one that handled the whole thing; I didn't have anything to do with it.

Q You put your affairs in his hands so far as this option was concerned? A He explained it to me how it was.

Q He reported to you from time to time of the progress of those negotiations, did he not? A Yes.

Q He kept you entirely familiarized with them? A Not entirely, no.

Q But from time to time and from day to day he talked with you about these, did he not? A Yes, we talked about them.

Q And you went into considerable detail about it, didn't you? A Yes.

10

20

30

40

*Robert C. Lockward, re-cross.*

Q And it was with your entire approval that these negotiations were carried on? A Yes.

Q And you urged no objection or did not hesitate to sign the joint option with him for the sale of your stock? A No, I did not.

10 Q Did you during those negotiations call his attention to the fact that you had given to Moore this offer of November 1, 1915? A No, I don't think I did.

Q When did you first call his attention to the fact of the giving of that offer? A I don't think I called his attention to it at all; I am not sure about that now, but I don't think that I did.

20 Q It wasn't until after you presented the certificate to him for signature that you told him about it, which was sometime in April, 1916? A No, I don't know as I spoke to him about it; Mr. Moore wrote to him and told him that he had the offer.

Q And you knew about Mr. Moore's having written him? A Yes, I think I did.

Q Had you seen the letters? A No, I don't think so.

30 Q You are not positive about that? A No, I know I didn't see the letters.

Q But Moore had communicated to you about the details of your negotiations with Evans, then? A He told me that he had written to Mr. Evans.

Q Did he tell you what he had written? A No, only that he had had an offer from me.

40 Q And did he tell you that he had mentioned to Mr. Evans the amount of the offer? A I wouldn't say for sure on that, but I imagine he did.

*Robert C. Lockward, re-cross.*

Q You talked with Moore a number of times about this, didn't you? A About the buying of the stock?

Q Yes. A I suppose I did.

Q And his (Moore's) correspondence and negotiations with Evans? A No, I don't know about that. 10

Q But still you knew that Moore had written a letter to Evans? A Yes, from what Mr. Moore had told me.

Q And he told you the contents of that letter in general, had he not? A I think he told me that he had written a letter to Mr. Evans telling him that he had the offer from me.

Q For how much? A I don't know that he mentioned the amount; I am not sure.

Q You knew that Moore had written Exhibit D. 2 for identification, being the letter from him to Evans, fixing the figure of \$50,000 for the stock? A I saw that written. 20

Q And didn't I have that in my possession when I called with Mr. Evans upon you at the factory on November 2, 1915? A I guess likely you did.

Q Why, I ask you, had you not brought the fact of the existence of Exhibit C. 2 to Mr. Evans, between November 1, 1915, and April, 1916? A I don't know for sure whether I had or not. 30

Q If you didn't, why didn't you?

Objected to. Objection sustained.

Q Can you speak positively as to whether or not you showed this paper, Exhibit C. 2, to Mr. Evans during that period?

*Mr. Van Blarcom.* It doesn't appear that it was in his possession. 40

*Isaac L. Evans, direct.*

*Witness.* I didn't have that paper; that was Mr. Moore's.

*Court.* You delivered it to Mr. Moore on the day it bears date?

*Witness.* Yes.

10 Q Did you tell Mr. Evans during that period about the existence of this offer of \$10,000? A I wouldn't be sure whether I did or not; I don't remember whether I did.

Q Why did you wait until April, 1916, to make good your offer of November 1, 1915? A I wouldn't say on that.

COMPLAINANT RESTS.

ISAAC L. EVANS, defendant, sworn.

20 *Direct examination by Mr. Harrison.*

Q Where do you live? A Caldwell, New Jersey.

Q You are president of the Lane & Lockward Company? A Yes.

Q How long have you been identified with the company? A Since January 1, 1906.

30 Q In what capacity? A Up to four years ago as vice-president; since that time, as president and treasurer.

Q What have been your duties there? A I have handled all the cash, made all purchases and taken care of people calling at the factory, and incidentally watching everything going on in connection with the business; in fact, I feel that I have more than my share of the responsibility.

Q Do you know John C. Moore? A Yes.

40 Q What is his position with the company?  
A He acts as salesman for us.

*Isaac L. Evans, direct.*

Q Do you know how long he has been identified with the company? A He was with the company prior to my going with the Lane and Lorkward Company; I imagine about ten years prior to my connection with the company.

Q How much does he get a week at the present time? A \$25.

10

Q Do you know how he acquired title to the fifty shares of stock represented by certificate in evidence as Exhibit C. 1? A He acquired that stock from Louis Lockward.

Q The father of complainant? A Yes.

Q For what consideration? A Par value, \$5,000.

Q Did you have an agreement with Mr. Moore relative to the purchase by you of that fifty shares of stock, and the sale by you to him of the fifty shares of stock? A I did.

20

Q I show you agreement bearing date June 14, 1913, between John C. Moore and Isaac L. Evans, and ask you if that is the agreement to which you refer? A Yes, sir, that is the original agreement.

Q And the signatures are the signatures of John C. Moore and Isaac L. Evans? A Yes.

*Mr. Van Blarcom.* I waive the subscribing witness.

30

*Mr. Harrison.* I offer it in evidence.

(Marked Exhibit D. 6.)

Q Did you ever say anything to Mr. Lockward about the existence of this agreement? A Yes, sir, I apprised him of it.

Q When? A At the time it was made. I wouldn't say the exact date, but the agreement was perfected during Mr. Lockward's vacation that summer, and on his return from his vaca-

40

*Isaac L. Evans, direct.*

tion I apprised Mr. Lockward of the existence of the agreement.

Q That was in the summer of 1913? A Yes.

Q Was this agreement ever a topic of conversation between you subsequently? A No, sir.

10 Q Was there any reference made to it in the conference on November 2, 1915? A I don't recall that there was.

Q I show you Exhibit D. 2 for identification, and ask you whose signature is annexed to that letter? A John C. Moore, I recognize the signature.

Q And from whom and when did you receive it? A It was delivered to my house by Mr. Walter G. Brandley, attorney-at-law, Caldwell, New Jersey, on the night of November 1, about 6:30 in the evening.

20 Q Was the letter in the condition in which it now is? A No, the pencil memorandum here is my own.

*Mr. Van Blarcom.* The pencil memoranda were put on by you?

*Witness.* Yes.

*Mr. Harrison.* I offer the letter in evidence.

30 *Mr. Van Blarcom.* No objection, except as to the pencil memoranda made by Mr. Evans.

*Court.* Of course that doesn't go in.

(Letter of November 1, 1915, marked Exhibit D. 2.)

Q What did you do with the letter? A I kept it.

Q Did you bring it to Mr. Lockward's attention? A Yes, sir.

40

*Isaac L. Evans, direct.*

Q When and under what circumstances? A On my arrival at the factory the next morning I got in touch with him, and I said that the letter didn't identify the bidder for the stock; I said, "Are you the man that is bidding for the stock, offering \$50,000?" He said, "I am." I said, "I am very much surprised, Mr. Lockward; the only thing for me to do, inasmuch as that letter only gives me twenty-four hours to make up my mind—the best thing I can do is to get in touch with my attorney," which I did; I jumped on the car and came to Newark and saw you. You accompanied me back to Caldwell and we saw Mr. Lockward together. 10

Q When? A I imagine on arrival at the factory, somewhere around, perhaps, half-past three or four o'clock, on the second of November—the next day. We went over the situation with Mr. Lockward. 20

Q Who were present at that conference? A Mr. Lockward, yourself and myself. We went over the situation thoroughly with him; you pointed out to him the foolishness, in what it meant to the business; it was a very unfortunate condition; that you questioned the advisability of his paying that amount of money for the stock; you told him that we were willing to sell him for the same consideration 200 shares of stock. 30

Q That is \$50,000? A Yes, at the rate of \$250 a share.

Q Was it \$200 a share or \$250 a share? A I think it was \$250 a share, and wanted to show to him that he was paying a very high price for fifty shares of stock. You suggested that Mr. Moore was playing both ends, which was a very unfortunate condition, and after a talk with Mr. 40

*Isaac L. Evans, direct.*

Lockward a while, he said, "I will withdraw the offer"—presumably the \$50,000 offer; then we took up with you the advisability.

Q Was there a written withdrawal prepared?

A Yes.

Q By whom? A You wrote the withdrawal.

10 Q I show you Exhibit D. 1 for identification and ask you if that is the withdrawal which I then prepared? A Yes.

Q And Mr. Lockward then signed it? A Yes.

*Mr. Harrison.* I offer the withdrawal, Exhibit D. 1 for identification, produced by Mr. Moore today, in evidence.

(Marked Exhibit D. 1.)

20 Q And what was done with this paper, who took it? A It was left in Mr. Lockward's hand, and he said he would go up and deliver it to either Mr. Brandley or Mr. Moore that night.

Q Was anything said in that conversation about an offer of \$10,000 having been made by Mr. Lockward to Mr. Moore? A No, sir; positively not.

Q What else took place in that conversation?

30 A We talked over the advisability of dividing the stock, that is, taking over the Moore stock, dividing it between ourselves, trusteeing it or having a dummy director in case of a dispute or have him act as an umpire, and it all seemed to be very agreeable to Mr. Lockward. I even suggested that we enter into a formal agreement that such would be the case, that no one would buy the stock without the consent of the other, and that we would buy it and divide it; that it would be to our advantage and the advantage of

40 the company, all of which seemed to be very

*Isaac L. Evans, direct.*

agreeable to Mr. Lockward, and I gained the impression at the time that you would see Mr. Lockward's attorney and go over the situation with him and work out some such plan.

Q State whether that was said, and not your impression. A My recollection is that that was said.

10

Q Was the name of Mr. Lockward's attorney mentioned at that time? A Yes, Mr. Thomas C. Provost's name was mentioned.

Q When you suggested that this agreement should be put in writing, what was said? A Mr. Lockward said it wasn't necessary, that his word was as good as his signature, and a written agreement was not necessary, and I felt the same way about it myself, as far as I was concerned.

Q When did you first learn of the existence of Exhibit C. 2, being the Lockward \$10,000 offer? A This morning.

20

*Court.* At the time you learned of the \$50,000 offer on November 2, was nothing said about another offer of \$10,000 having been made?

*Witness.* No, sir; I didn't know it was in existence.

Q What was the first communication you had with Mr. Moore relative to the purchase by you of his fifty shares of stock? A This letter (referring to Exhibit D. 2 of November 1, 1915).

30

Q What was the next communication you had with Mr. Moore relative to this matter? A The next communication I had from Mr. Moore was under date of November 25.

*Mr. Harrison.* I offer in evidence the letter of November 22, 1915, from Isaac L. Evans, to John C. Moore.

(Marked Exhibit D. 7.)

40

*Isaac L. Evans, direct.*

Q To what option did you refer in that letter? A In this agreement whereby I agreed to reserve fifty shares as a matter of protection to myself, I gave Mr. Moore a chance to buy the fifty shares.

10 Q And the option which you refer to in this letter as being prepared by the bidder, was what option? A The joint option that Mr. Lockward and myself signed.

Q And were considering offering to the Mutual Tobacco Company? A Yes, and as a matter of protection to myself, I offered the fifty shares to Mr. Moore first.

Q Did you receive a reply to your letter to Mr. Moore? A Yes.

20 Q I show you letter of November 24, 1915; is that the reply? A Yes.

*Mr. Harrison.* I offer that letter in evidence.

(Marked Exhibit D. 8.)

Q What was the next step in the correspondence? A Letter to me from John C. Moore, under date of November 25, 1915.

*Mr. Harrison.* I offer that in evidence.

30 (Marked Exhibit D. 9.)

Q What reply did you make to that letter? A Letter under date of November 27, 1915, to John C. Moore.

*Mr. Harrison.* I offer that in evidence.  
(Marked Exhibit D. 10.)

40 Q Why did you write that letter? A Because there the purchase price was not named and there was no evidence—he didn't submit anything showing that he had a *bona fide* offer.

*Isaac L. Evans, direct.*

Q The next letter was one which you received from Mr. Moore? A Yes.

Q And that is the letter of November 29, 1915? A Yes.

*Mr. Harrison.* I offer that in evidence.

(Marked Exhibit D. 11.)

Q And your reply to Mr. Moore is contained in the letter of December 2, 1915? A Yes, sir. 10

*Mr. Harrison.* I offer that letter in evidence.

(Marked Exhibit D. 12.)

Q Why did you write that letter? A The letter explains itself; I had no means of knowing whether he had a *bona fide* offer or had an offer of any kind; it was my understanding that that was the idea of having a written offer, that it would enable me to know whether the price named was a *bona fide* price and whether he had a *bona fide* offer for the stock. 20

Q Did you have a talk with Mr. Moore about this letter of his, or this other correspondence?

A No, sir; the last letter was left at my house.

Q By whom? A Mr. Moore.

Q While you were at home? A Yes, sir.

Q Delivered to you? A Yes, sir. 30

Q When? A On a Sunday evening.

Q Can you fix the date? A It was the day prior to the date of his letter; if his letter was dated the 29th, say the 28th. He called at my house on a Sunday evening. I presume this letter is Monday, November 29th; it was left at my house on Sunday night.

Q And did you have a conversation with him then? A No, sir; I read the letter and said "All right." 40

*Isaac L. Evans, direct.*

Q Did Moore ever exhibit to you any offer other than the offer set forth in Exhibit D. 2, being the \$50,000 offer? A That is the only one, and this offer here.

Q By "this offer here," you refer to Exhibit D. 11? A Yes, sir.

10           *Court.* In which he states he has a \$10,000 offer?

*Witness.* Yes.

Q Did you take up those letters or the Moore proposition with Mr. Lockward? A That letter was delivered to my house, or at least delivered to me Sunday evening.

Q You refer to Exhibit D. 11, of Novmber 29? A Yes. As soon as I got to the factory and got in touch with Mr. Lockward, I showed him this offer; he said, "Yes, Mr. Moore was down here yesterday and he is very anxious to have the Mutual Company buy his stock," and I said to him, "Well, I am sticking to Mr. Evans on this proposition; my advice to you is to go and see him." Which Mr. Moore did. I said, "Then this \$10,000 offer is not yours?" He said, "No, sir, it is not; I imagine Mr. Moore is trying to get a release from his agreement with you so that he can give an option to the Mutual Tobacco Company."

20

30

Q You fix the time of that conversation as being Monday following the Sunday when the Exhibit D. 11 was delivered to you? A Yes.

Q How long did you talk with Mr. Lockward on that occasion? A Possibly ten or fifteen minutes?

Q Was there any reference made at that time with regard to the agreement which you testified to as having been made on November 2? A

40

*Isaac L. Evans, direct.*

There was no occasion for referring to it; we thought we were both on the square; at least I did.

Q Did you subsequently talk with Lockward about the purchase of the Moore stock? A Yes, it came up two or three times; Mr. Lockward suggested we buy that stock and divide it. I 10  
said, "Rob," or Mr. Lockward, rather—

Q We all call him Rob; you can do so. A  
—"I don't think Mr. Moore is giving us the service we are paying for; I don't think he is playing fair with us; we have a very large amount outstanding there, and if we go to work and take that stock off Mr. Moore's hands, it simply means that Mr. Moore's interest ceases here, and there is a whole lot of money out there that we will never get on the road," and 20  
that was taken up on those lines several times, and I always discouraged the proposition, always feeling that when the conditions warranted, we would take over Mr. Moore's stock for what it was really worth. I always felt we would be willing to pay Mr. Moore \$10,000 for his stock; it wasn't with the idea of a freeze-out or anything of the sort.

Q Can you fix the time of these several occasions when you talked with Mr. Lockward about 30  
this matter? A We had one or two conversations in December.

Q Of 1915? A Yes, sir; and two or three conversations after the turning of the year; we felt that Mr. Moore was running his expenses too high; we talked that over with Mr. Lockward, and he bought a book for that purpose and took it up to his house, and informed Mr. Moore that his expense account would have to be detailed item for item. 40

*Isaac L. Evans, direct.*

Q When was your attention first called to Exhibit C. 3, being the note as we would term it, of April 10, 1916, from Lockward to Moore? A About an hour and a half ago.

Q The first time was in the court room here?  
A Yes.

10 Q And had Mr. Lockward or Mr. Moore ever said anything to you about it? A No, sir.

Q During this time there were negotiations going on for the transfer of your stock and the stock of the Lockward interests to one Tansy of the Mutual Company, were there not? A Yes, sir.

20 Q Will you as briefly as you can, tell just what those negotiations were, particularly with reference to the part which you and Mr. Lockward and Mr. Moore had in them? A I heard of this proposed combination of the few remaining independent tobacco manufacturers; I went over and saw Mr. Tansy, sized up the situation, and came back and talked it over with Mr. Lockward, fixed the price for the stock between us, saw Mr. Tansy again and agreed on a price which was agreeable to Mr. Lockward.

30 Q Were you independent dealers going to form another corporation known as the Mutual Company? A Yes.

40 Q And your company was to be absorbed in the new company? A Yes, and they elected me second or third vice-president, something of that sort, but I realized from its inception that the promoter was a very weak figure, and notwithstanding Mr. Lockward had signed the option at a certain figure, which was entirely agreeable to him, I felt and expressed myself to Mr. Lockward—

*Isaac L. Evans, direct.*

Q By that option you refer to the option Exhibit D. 4? A The individual option signed by Robert C. Lockward and Lida L. Lockward, Exhibit D. 5.

*Mr. Harrison.* I offer in evidence Exhibits D. 4 and D. 5 for identification.

(Marked Exhibits D. 4 and D. 5.) 10

*Witness.* The original option called for \$200 in cash and \$100 Mutual stock.

*Mr. Van Blarcom.* You are speaking of the papers you just looked at?

*Witness.* Yes.

*Court.* Are those the papers that were not delivered?

Q To whom were these papers delivered? A Signed by Mr. Lockward and I was to take them over and deliver them to Mr. Tansy. 20

Q Did you ever deliver them? A No, I felt that Mr. Lockward was entitled to more money and less stock. Then as a further protection, these original options were—Mr. Lockward gave an option covering his stock; I felt we had better have a joint option, so that Mr. Tansy couldn't come along and get my stock without taking Mr. Lockward's stock, and I felt that we might better get more cash and less stock, and on that basis—on the joint option we prepared, I think that Mr. Lockward was to get \$12,000 more cash if we were taken over. 30

Q You refer to Exhibit D. 3 for identification? A Yes.

*Mr. Harrison.* I offer in evidence Exhibit D. 3 for identification.

(Marked Exhibit D. 3.)

Q This is a true copy? A Yes. 40

*Isaac L. Evans, direct.*

(It is agreed that this may be used as though the original were produced.)

Q Had you also signed the option dated the 18th day of November; in the same form as the option signed by Mr. and Mrs. Lockward? A Yes, sir, at the same figure.

10 Q Is this the option to which you have just referred? A Yes, sir.

Q And what became of that option? A These are the originals.

*Court.* They were never delivered?

*Witness.* I never delivered them to Mr. Tansy.

*Mr. Harrison.* I offer that in evidence (Marked Exhibit D. 13.)

20 Q And in place of the one being marked, and the two signed personally by Mr. Lockward and Mrs. Lockward, you gave the joint option signed by Mr. Lockward and yourself? A Yes, at the higher figure, calling for more cash and less Mutual stock, which to my mind was worthless.

30 Q To what extent have you familiarized Mr. Lockward with those negotiations? A We discussed them from time to time; one day we thought we would get our money, and the next day we didn't think we would get a cent.

Q Have you kept in touch with the whole progress of the negotiations? A Decidedly.

*Court.* Did the Mutual Company ever materialize?

*Witness.* They sold a little stock; they hired a suite of offices in Fifth avenue and fitted them up with mahogany furniture.

40 Q And they never attempted to exercise the option? A No, but they put the Campbell To-

*Isaac L. Evans, direct.*

bacco Company out of business; they acquired their business.

Q Had you talked with Mr. Moore about these options? A Decidedly not.

Q Will you state what transpired at this day in April, 1916, when Mr. Lockward handed to you the Moore certificate, known as Exhibit C. 1? A Rob came in the office, and very much to my surprise, I found the stock book spread out on my desk, and a new certificate made out for fifty shares of stock; he said, "I have bought the Moore stock;" I said, "Is that so?" I said to him, "Is that so?" "Yes, I wanted it transferred." I said to him, "Well, Rob, the hour is growing late, suppose we fix it up in the morning." In the meanwhile I thought I would get in touch with my counsel and act on his advice. I went down to the factory the next morning, and Mr. Lockward came in and said, "Are you ready to sign that certificate?" I said, "I am not." "Why not?" "I am acting on the advice of my counsel." 10 20

Q Did you make any reference to your not signing because—

*Mr. Van Blarcom.* I think counsel ought not to suggest anything. 30

*Court.* Let him state it himself.

A I said, "Are you willing to live up to your gentleman's agreement and sell me the twenty-five shares which will divide the stock between us?" He said, "I am not." I said, "Why not?" His excuse was, after what I tried to put over him in connection with the Mutual Tobacco Company; I think the conversation ended there; I asked him what agreement he referred to, and he told me what it was. 40

*Isaac L. Evans, direct.*

Q What did he say? A He took exception to the agreement with Mr. Tansy, whereby I was to get a certain consideration for obtaining Mr. Lockward's option; I would be very glad to—if I may be permitted to say, to have his Honor see the agreement.

10 *Court.* What agreement do you refer to now?

*Witness.* The side agreement I had with Mr. Tansy.

Q Did he say that he had seen or knew the contents of this side agreement, as you call it? A I saw that the Mutual Tobacco Company was a stock jobbing scheme—

Q Did Mr. Lockward say that he had seen or knew the contents of this side agreement?

20 A It had been brought to his attention by Mr. Tansy.

Q Is this the paper writing signed by you and Mr. Tansy? A Is the original.

Q And the signatures to that agreement are the signatures of you and Mr. Tansy, with no witness? A Yes.

Q And Mr. Tansy's name was signed in your presence? A Yes.

30 *Mr. Harrison.* I offer agreement in evidence.

(Marked Exhibit D. 14.)

Q Did you ever identify yourself with the Mutual Tobacco Company? A I attended several meetings of the Board of Directors.

Q Did it ever become a going concern? A No, sir.

40 Q Did you ever get 5,000 shares of stock, or any number of shares of stock of that company? A I did not.

*Isaac L. Evans, direct.*

*Court.* What is the date of the agreement?

*Mr. Harrison.* Eighth of December, 1915.

Q Have you had any other conversation with Mr. Lockward about this so-called gentleman's agreement, other than those you have testified to? A We have had the matter up perhaps three or four times casually. I realized the foolishness of these fights in a close corporation, and in order to avoid a contest, I offered a buy or sell proposition; I said I would either buy his holdings, or he could buy mine; I made a low price; I even offered to make a division of the stock, that I would waive my right or rights that I had under the Moore agreement; the only thing Mr. Lockward said, "I bought the stock, I am going to have it." 10 20

Q How many shares of stock are issued? A 650.

Q What are the stock holdings? A The present stock holdings?

(It is admitted that Mr. Lockward owns 290 shares, Mrs. Lockward 5 shares, Mr. Moore is still a stockholder of record, 50 shares, sold to Mr. Lockward, and Mr. Evans has 305.) 30

*Court.* Your controversy with Mr. Lockward seems to arise because he objected to your obtaining these shares of stock from Moore, and you objected to his making a fictitious offer for the stock?

*Witness.* Yes.

Q I show you a letter of November 1, 1915, from John C. Moore, and ask you if that letter was received by you? A Yes. 40

*Isaac L. Evans, cross.*

Q By mail or by personal delivery? A Personal delivery.

Q When? A November 1, 1915.

*Mr. Harrison.* I offer that letter in evidence.

(Marked Exhibit D. 15.)

10

*Cross examination by Mr. Van Blarcom.*

Q You said, referring to this written contract, Exhibit D. 6, that you told Mr. Lockward about it? A Yes.

Q When did you tell him about it? A The summer of 1913; I think the end of August or first part of September.

20 Q What did you say to him? A Mr. Lockward returned from his vacation and on his return apparently he didn't seem disposed to take up his regular work; it came the time of the week that certain work should have been done; I said, "Rob, what about your orders; are you going to get them up?" I told him before he went away how I felt about this proposition; it seemed he wanted to put his brother-in-law in—

*Mr. Harrison.* He said that to you?

30

*Witness.* Yes. That he would continue to draw his salary and pay this brother-in-law out of his salary, or some such arrangement, which I didn't agree to. After he came back on a Thursday, as I said before, it came the question of these orders, and then he brought up this brother-in-law proposition, and I said that I wouldn't agree to it, and I didn't believe in bringing in relatives in any business, and I said,

40

"Rob, we have got to get together on this

*Isaac L. Evans, cross.*

proposition, and I want to say to you, that Mr. Moore and I propose to see this business through, and Mr. Moore has given me, or made an agreement with me, whereby if he wants to dispose of his stock, that I have the first right to purchase it."

Q Did you tell him about the fact that Moore was also going to vote his shares any way you wanted him to? A No. 10

Q Why didn't you tell him about that? A I didn't see any occasion for it.

Q Did you say to him that, "I haven't been asleep this summer, you can see"? A I did.

Q And by that instrument, you in your mind intended to get control of the company. the stock control, did you not? A No, sir; I did not. 20

Q What was your intention? A I figured that Mr. Moore would be a happy balance in the business, and he would have been, if he had been the man that I thought he was.

Q You started off by telling Mr. Lockward, he would be kicked out, or words to that effect? A I never made any such remark.

Q Or words to that effect? A No.

Q What did you mean by saying you hadn't been asleep this summer and got this agreement with Moore? A I had protected myself in case it became necessary. 30

Q Didn't you want Mr. Lockward to infer that if he didn't attend to his business and do what you wanted him to, that he would be thrown out? A There wasn't anything personal about it; the only thing I had in mind at any time in the conduct of this business was the success of the business. 40

*Isaac L. Evans, cross.*

Q Why did you want to obtain the stock control?

*Mr. Harrison.* He hasn't said he did.

Q Wasn't it your intention to obtain control by this paper? A I never offered Mr. Moore five cents for his stock at any time.

10 Q By this paper wasn't your intention to obtain the stock control? A No, sir.

Q Why did you have it put in the contract that he was to vote his shares as you directed? A As a matter of protection to myself.

Q And when did you first consider the option to stand between the Mutual Company and Tansy? A After the receipt of the \$50,000 offer.

20 Q After November first? A Yes.

Q Then you concluded that you would sell out? A Yes, I felt that I was treading on very dangerous ground.

Q Did you attempt to buy Moore's shares? A I did not.

Q Then you and Lockward were going in to freeze Moore out? A No, sir.

30 Q Why didn't you take Moore into this option? A For the reason in case our option was not taken over or exercised by the Mutual Tobacco Company, that this agreement would still hold good between Mr. Moore and myself, but I had an understanding with Mr. Tansy that Mr. Moore's stock, in case we were taken over, would be taken over by them at the same price that we would have received, or were to receive.

40 Q Did you consider that you had by your letters to Moore relieved yourself of the obligation of the contract to sell stock to Moore?

*Isaac L. Evans, cross.*

*Mr. Harrison.* I object to that as a conclusion.

*Court.* I will take the evidence.

*Examination by the Court.*

Q When is the annual meeting of your company? A The first Thursday in April. 10

Q Did you have the last annual meeting in April? A No, the by-laws provide that officers hold over.

Q On November 22, 1915, had you already signed your option with Mr. Tansy? A You mean that the option had been delivered to Mr. Tansy?

Q No, had you signed it? A Signed what?

Q The option to Mr. Tansy? A Yes.

Q D. 13? A Yes, that had been signed at that time, but not delivered. 20

Q You knew the price you were going to get for your stock? A Yes.

Q In your letter of November 22 to Mr. Moore, Exhibit D. 7, why didn't you refer to the price you were going to get? A The reason I didn't refer to the price was, that I wanted Mr. Moore to see this prepared option, to know that it was authentic, a *bona fide* offer; I wanted to impress upon him my understanding of this agreement between Mr. Moore and myself, whereby any offers that we received should be in writing, subject to our inspection, and would make known to us the price offered per share; that is the reason I said that "this prepared option is in my possession, subject to your inspection, which will make known to you the price offered per share." 30

*Isaac L. Evans, cross.*

Q You don't mention any names in your letter? A It was in my possession subject to his inspection, something that he could verify.

Q And you thought by this letter if he didn't purchase, you would be released from your contract? A Yes, before I signed this contract.

10 Q Then you say you never spoke to Mr. Moore about these options at all? A No, sir.

Q He was in and out of the factory a good deal, I presume? A Week ends, yes, sir.

Q You saw him every week? A Yes.

Q Did you ever have any conversation with him on the subject of this stock? A None whatever.

20 Q When was your last conversation with him about stock matters, or didn't you ever have any? A The last conversation with Mr. Moore was the time that he brought the letter of November 29th.

Q You looked at it and merely remarked "All right"? A Yes.

Q And after that did you ever speak to him? A No, sir.

30 Q Why didn't you ask to see this option or this offer in writing? A I was standing back of my letter of December 2nd, where I state, "I claim the right to inspect your alleged offer before giving you my position as to the purchase of this stock." (Referring to D. 12.)

Q Did you ever claim the right to inspect the offer? A Yes.

Q Why; by this letter, that is all? A Yes.

Q But you saw Mr. Moore within a week and never said, "Mr. Moore, I want to see that offer"? A No.

40 Q You didn't want the shares at that time, did you? A Why not?

*Isaac L. Evans, cross.*

Q Did you? A Certainly, and I would have bought the stock, if it hadn't been that my gentleman's agreement with Mr. Lockward, that we would not buy the stock except at a time that was opportune and for the good of the business.

Q You would have bought it for \$50,000? A Oh, no, \$10,000.

10

Q But the offer refers to fifty?

*Mr. Van Blarcom.* No, we are talking about the offer of \$10,000.

*Mr. Harrison.* The Court asks you if you would have bought it for \$10,000?

*Witness.* Surely I would have bought it, and been glad to, if I had not given Mr. Lockward my word that I wouldn't buy it.

Q Did you ever talk with Mr. Lockward about the two of you going in and taking up the offer of \$10,000? A Yes; I had no knowledge of this \$10,000 offer; the only offer I had knowledge of was a \$50,000 offer. 20

Q Didn't he write you (Exhibit D. 11) that you could have the stock for \$10,000? A Yes.

Q Stating that he had another offer for the same? A Yes.

Q After the receipt of that letter did you ever take up with Mr. Lockward the advisability of buying more stock at that price? A Yes. 30

Q When was that? A That was taken up with him two or three times in December, and two or three times after the first of the year.

Q What was said about it? A The proposition originated or came from Mr. Lockward particularly, with the idea of buying the stock and dividing it; as I explained it in the testimony, that owing to the outstanding accounts—

Q You didn't want to get rid of Moore because of the accounts that he had out? A Yes, 40

*Isaac L. Evans, cross.*

and they were particularly heavy at that time, and I thought until things were brought in shape, that it would be a balance.

*Further cross examination by Mr. Van Blarcom.*

10 Q When was that conversation? A In December and the early part of January, and it was at that time that Mr. Lockward bought the expense book and went up to Mr. Moore's house; I have had no dealings with Mr. Moore since.

Q Why didn't you tell Moore that you had an agreement not to buy his stock, you and Lockward; why didn't you write Moore that you and Lockward were not going to buy his shares? A I didn't know that he had an offer from Mr. Lockward.

20 *Court.* You don't understand the question.

Q Why didn't you let Moore know that you and Lockward wouldn't buy his shares? A Why should I tell him that?

Q You didn't tell him? A No.

Q Were you willing that Moore should sell these shares to some one else for \$10,000? A No, sir.

30 Q The control of the company was possibly passing away in Moore's fifty shares? A Yes.

Q You made no effort to stop it? A No.

Q Wasn't the reason because you thought you were going to sell out to the Mutual Tobacco Company? A No, sir.

Q Why didn't you ask Moore to say the buyer of those shares? A I told him that after this fictitious offer of \$50,000, I had had enough of Mr. Moore.

40

*Isaac L. Evans, cross.*

Q Lockward was the one that made the \$50,000 offer? A Yes, but Mr. Moore was responsible; it was a concoction between them.

Q Moore concocted it? A I don't know who did.

Q You had been advised by counsel during these times; you had had the advice of counsel? 10

A When this offer of \$50,000 was presented to me, I consulted Mr. Harrison.

Q Were you not interested to know who was making this offer of \$10,000? A What is that?

*Court.* For the stock, the one mentioned in the letter, for Moore's stock

*Witness.* From what Mr. Lockward told me; after I received this letter from Mr. Moore, I took it down and showed it to Mr. Lockward, and as I said before, when he said that Mr. Moore had been to see him Sunday and he was excited and he was fearful that he might be left out in the cold, and he was very anxious to have the Mutual Tobacco Company buy his stock, and he said that he was speaking to him on the proposition, and his advice was to go and see me. 20

Q Then under these circumstances you didn't care what became of Moore's stock, did you? A Certainly, I would have bought the stock at that time, if I hadn't given Mr. Lockward my word of honor as a man that I would not buy the stock. 30

Q What did you want to buy it for if you were going to sell out to the Mutual? A We had very poor prospects of selling out to the Mutual.

Q Did you not at that time know that the Mutual was no good? A From its inception. 40

*Isaac L. Evans, cross.*

Q Did you know at the time you gave this option, that the Mutual was no good? A Not positively, no; I still had hopes.

Q You were dealing for a long period with the Mutual Tobacco Company or Tansy? A My dealings with the Mutual Tobacco Company started subsequent to this alleged offer of \$50-  
10 000.

Q It began somewhere in December, 1915? A In November; I felt that taking everything into consideration, if we could go to work and close out the company, I would be better off.

Q And your negotiations continued how long from November, 1915? A The joint option was closed the eighth of December.

Q Was it signed on its date? A Yes.

20 *Court.* When did you finally give up all idea of doing business with the Mutual?

*Witness.* I think the option was for sixty days.

Q Four months, wasn't it? A Was it? We had hopes up to the last moment, hoping that they would come across, but from my associations with them, I was satisfied our chances were very slim.

30 Q Where did Mr. Lockward sign the joint option? A At my desk in the office.

Q Then you took it to New York? A Yes.

Q Where had that been prepared? A By a fellow named Schwartz, in New York; it had been mailed to me; they hesitated about paying the advance and finally they came to our figures.

Q Then you took the joint option to New York? A Yes.

40 Q And when was this contract between you and Tansy, the contract on the side which you

*Isaac L. Evans, cross.*

referred to, Exhibit D. 14, signed? A The same time.

Q It is dated the same date; was it signed the same day, too? A Yes.

Q What time of the day did you get the joint option? A I think it is the day previous.

Q They are both dated the eighth of December? A Yes.

10

Q Did you take the joint option to New York the same day you got your private agreement with Tansy? A Yes.

Q So on the same day you and Lockward signed your agreement. you got the private agreement between you and Tansy? A Yes, but the arrangement had been made for it prior to that.

Q But at all events you had an arrangement to get \$200 a share? A Yes.

20

Q Previously? A Yes.

Q You could get that at any time? A Yes.

*Mr. Harrison.* A promise of it.

Q What object would you have in buying Moore's stock, these fifty shares, if you were going to dispose of your holdings, or thought you were? A I never had any hopes.

Q Yet you went to all this trouble of making an agreement on the side for \$50,000 of stock, and running back and forth, and didn't think anything would be accomplished? A There was always a possible chance, but I felt doubtful from its inception.

30

Q Why? A The way it was organized.

Q What was the difficulty about it?

*Mr. Harrison.* I object.

*Court.* They both agreed that it didn't amount to very much.

6

*Isaac L. Evans, cross.*

A The promoter, Mr. Tansy, had options on five different plants at exorbitant figures; no one seemed to know what price he was paying for these plants; we found out afterwards; he was very hopeful of the price that he was to get for them; it was supposed to be a \$20,000,000 company, and he demanded \$10,250,000 worth of their stock for plants that were not worth a million dollars in stock and cash.

10 Q Was there any difficulty about that proposition going through? A I think so.

Q It could go through all right, couldn't it? A If some one landed in jail, but I discouraged my friends; I said "Don't you invest a cent until I see it is all right."

Q And still you were going to turn over your plant up there? A Yes.

Q To come back to Moore's shares, were you not interested to know who had made this proposal to him to purchase for \$10,000? A I stood back of my letter.

Q Were you interested to know who was making the offer? A I was satisfied in my mind who was making the offer.

Q You suspected it was Mr. Lockward? A A No, it was the Mutual Tobacco Company.

30 Q Were you willing to have it sold to them?

A If they had taken over our stock, it would have been immaterial, wouldn't it?

Q And in your mind it was immaterial? A Oh, that was neither here nor there; I stood back of my letter.

Q In your mind, it was immaterial if the Mutual deal went through? A No.

Q But if the deal went through with the Mutual, you didn't care what became of Moore's shares; that is true? A Yes.

40

*Isaac L. Evans, cross.*

Q You appreciate, then, that if Moore had an option or an offer from the Mutual for \$10,000 and you didn't take advantage of it, you had lost your rights to buy Moore's stock? A No.

Q What was in your mind about that? A I claimed the right to inspect his offer; I never refused to buy it.

10

*Court.* You don't understand Mr. Van Blarcom's question.

Q You thought that even though he had a *bona fide* offer, that unless you looked at it, your rights were preserved under the contract? A Yes.

Q Had you taken legal advice on that? A Yes.

Q Is there anything in that contract that says anything about the inspection of a written offer? A What was your idea of the offer being in writing, if it wasn't for the purpose of inspection?

20

Q (Question repeated.)

*Mr. Harrison.* I presume the contract will speak for itself.

Q What was in your mind about the provisions of that contract in regard to the written offer? A My communication to Mr. Moore when I got the release from him, expresses my understanding of the contract, wherein I said that the option was in my possession subject to his inspection, which would make known to him the price offered per share and would disclose to him who the purchaser was.

30

Q You thought that unless he did it in the same way you did, he couldn't accomplish a release? A Yes.

40

*Isaac L. Evans, cross.*

Q Assuming that this offer had come from the Mutual, and you had then looked at it, would you have then taken Moore's shares for \$10,000?

A It is pretty hard to know now what my state of mind was.

10 Q Did you want them? A If I hadn't given Mr. Lockward my word, I would have snapped that stock up like that (snapping his finger).

Q But you didn't care whether someone else took it or not? A I knew what the prospects were.

Q You didn't care whether someone else got it? A Certainly.

20 Q Still you made no effort to save the stock at that time? A If I thought there was a chance of anybody else getting the stock, I would have snapped it up quick, anybody outside of Mr. Lockward; I would have protected Mr. Lockward, and was protecting him and playing fair with him and not buying the stock.

Q You were protecting him by making this agreement with Mr. Moore in 1913; the original agreement with Moore was made to protect Lockward? A As a balance; I never made any effort to buy that stock from Mr. Moore.

30 Q You got an option, though, without putting up any money? A I give him one dollar.

*Mr. Harrison.* Actually passed?

*Witness.* Yes.

Q Given by way of check or cash? A Yes.

Q Did he give you a dollar, too? A No, I don't think so.

Q He didn't pay you anything then for your agreement? A It is right; perhaps the dollar was unnecessary.

*Isaac L. Evans, re-direct.*

Q Assuming you thought it was necessary, did you give him a dollar or not? A I think I offered the dollar to Mr. Moore and he said "That is all right, it is not necessary."

*Re-direct examination by Mr. Harrison.*

Q You said in answer to Mr. Van Blarcom, about an understanding with Tansy, that Moore received the same price for his stock that you received for yours; do you know whether Moore also gave an option to the Mutual Company or to Tansy? A I understand that he did, as a result of this offer of November 29, or whatever date it is. 10

Q Do you know when he gave that option? A Sometime in December, 1915.

Q Do you know whether or not it was upon the same terms that the joint option with Lockward was on? A I was told that it was. 20

Q You spoke about seeing Moore during this period on week ends; what did you mean by that? A Mr. Moore starts out Monday morning—he is supposed to, at least; he usually drifts in Friday or Saturday or Saturday afternoon.

Q To whom does he make his reports? A He never makes any verbal reports; the only thing he does, he turns in the money he collects and enters his orders on the order book. 30

Q Moore was a rather frequent topic of conversation between you and Lockward about that time? A Yes.

Q How often did you and Mr. Lockward talk about him? A I cannot recall how often, but I know the proposition came up periodically, different things pertaining to Mr. Moore, and we were very much dissatisfied with his expense account and thought it was very high, and we didn't 40

*Isaac L. Evans, re-direct.*

think he was getting the business for us he should; he seemed to have lost interest.

Q And did you talk with Lockward about the reason you should permit Moore to continue to hold his stock?

10 *Mr. Van Blarcom.* We have been all over that.

A I explained that the very moment that Mr. Moore got his money out of the business, we simply would be at his mercy, and it was only for the good of the business that I refrained from buying his stock at the time, on my agreement with Mr. Lockward.

20 Q When you say you took up with Mr. Lockward the matter of purchasing Mr. Moore's stock together, did you have any agreement as to how it would be purchased? A I think at the end of January, 1916, I said, "Well, Rob, suppose we take up the stock, you have Moore sell half of it to you and I will take the other half; and Mr. Lockward informed me that Mr. Moore would not sell the stock to me, that he could acquire it and I would have to get half of the stock from him, or through Mr. Lockward; that that was Moore's attitude, for some unknown reason.

30 Q Had you talked with him about any other method of distributing the stock? A We always had in mind what you had worked out at your visit, during your visit there on November second.

Q Did you talk with Lockward subsequently about it? A It was understood and it was perfectly agreeable to him.

Q Did you talk with him about it; when you say it was perfectly agreeable to him, did he say so? A Yes, he gave me that impression.

40

RECESS.

*Isaac L. Evans, re-direct.*

Q You talked with him about the method of the division of the Moore stock or all of the stock of the corporation? A Yes.

Q What was your conversation?

*Mr. Van Blarcom.* When was that?

*Witness.* The first part of December, 1915.

10

Q What was it? A The proposition.

*Court.* What was your conversation, about the stock, or the division or distribution of it?

*Witness.* The conversation was to the effect that we were to acquire Mr. Moore's stock and divide it in such a way that the Lockward holdings and my holdings would be exactly the same; and further, that we had under consideration the trusteeing of the stock; or, if that wasn't agreeable, that we would transfer each a share to a dummy director, who would act in the capacity, in case of a difference, as an umpire.

20

Q Did you talk with him on more than one occasion about that? A Yes, sir.

Q When? A Several times during December and several times about the first of the year.

Q By that you mean the first of 1916? Yes.

30

Q Why didn't you tell Lockward of Exhibit D. 14, which has been referred to as the side agreement between you and Tansy? A I considered it a personal matter between Mr. Tansy and myself.

*Court.* But as a matter of fairness, why didn't you feel that you were under an obligation to disclose that agreement to Lockward or divide the stock that you were going to get with him?

40

*Isaac L. Evans, re-direct.*

*Witness.* The reason was that it was in consideration of my identifying myself with the company.

10 *Court.* Didn't you realize, or didn't you at the time, that the suppression of that arrangement would look suspicious to Lockward or anyone else who might afterwards learn of it?

*Witness.* It didn't occur to me, no, sir.

Q You refer to this conference on November 2, 1915, at which I was present? A Yes.

Q Were you, Mr. Lockward and I together all the time during that conference? A Yes, sir; you and Mr. Lockward were together all the time.

20 Q What do you mean by that; you were not there all the time? A No, sir; I excused myself; the three of us talked together and I excused myself and left the room; I thought possibly there might be some features about the mix-up that Mr. Lockward would disclose to you.

Q How long were you out of the room? A Fifteen or twenty minutes, perhaps.

30 Q On cross examination you testified to having taken up with counsel matters referred to in Exhibit D. 12, that being the letter where you claim the right to inspect the alleged offer before making your decision? A Yes.

Q When did you take that matter up with counsel? A Not at the time.

Q. When was it? A Subsequent to the presentation of the certificate for transfer.

Q That was after April? A Yes, sir.

Q. And by counsel you refer to me? A Yes.

40 Q And why didn't you take it up with me before? A In your original visit you ex-

*J. Henry Harrison, direct.*

plained to Mr. Lockward you came there not as my counsel, more as having known us both for many years; you came there more as a friend, rather than my personal counsel, and for that reason I felt that it would only be fair to Mr. Lockward to take care of this proposition to the best of my ability without consulting you in the matter. 10

*Re-cross examination by Mr. Van Blarcom.*

Q When did you hear about the fact that Mr. Moore had given an option on his fifty shares to Tansy? A Monday of this week.

Q You never knew that before? A No, sir.

Q Didn't Tansy tell you he was getting Moore's stock also? A No, sir.

(By consent, copy of the option given by John C. Moore to James C. Tansy, under date of December 8, 1915, is admitted in evidence as though the original were produced.) 20

(Marked Exhibit D. 15.)

*Mr. Van Blarcom.* One copy of the option was signed by Tansy and one by Moore; we have the copy signed by Tansy, produced by Mr. Moore. 30

J. HENRY HARRISON, sworn for defendants.

*Direct examination by Mr. John A. Bernhard.*

Q I show you Exhibit D. 2 and ask you if you have ever seen that paper before? A I did.

Q After the date of that paper did you have a conversation with Mr. Lockward and Mr. Evans? A I did. I received this paper from Mr. Evans on the second of November, 1915, 6

*J. Henry Harrison, direct.*

and almost immediately after reading it, I went with him to Caldwell to the office of The Lane and Lockward Company, and had a conference with Mr. Lockward and Mr. Evans.

10 Q Were both gentlemen present during the entire conference? A With the exception of a very short time, during the latter part of the conference, when Mr. Evans, on his own motion, left the room.

Q The subject matter of that conference was in relation to this suit? A Yes.

20 Q What was that conference? A I told both Mr. Lockward and Mr. Evans very positively that they were making fools of themselves; that I thought that Moore was playing both ends against the middle, and that while Evans had the right, under his agreement with Moore, to buy the stock for the sum of \$50,000, I thought that it was a great shame for Moore to get that amount of money for the stock. I think it was about at that point that Evans left the room, and then I had a short talk with Mr. Lockward, where I am frank to say I did most of the talking.

30 Q Did Mr. Evans come back? A He came back, and then one or the other made an inquiry as to how the matter could be arranged, and I stated that I thought the best way was to acquire the stock by the corporation, or by one or both of the gentlemen together, divide the stock evenly, and put qualifying shares in the hands of a dummy; I also told them that the business had been a most successful business, having had a history, as they both knew, of over a hundred years; having paid large dividends; having made a number of fortunes  
40 for the various owners thereof; and that it

*J. Henry Harrison, direct.*

would be a shame if a small matter of this sort should cause a rupture between them. Towards the end of the conference Mr. Lockward, either at my suggestion or on his own motion, I don't recall which, signed a withdrawal of the offer of \$50,000.

Q Is this the paper to which you refer? 10

A I refer to Exhibit D. 1; the paper was then delivered to Mr. Lockward, who said that he would turn it over to Mr. Moore.

Q Was there any other conversation, Mr. Harrison, which you can recall? A The conversation ran over a period of possibly an hour or hour and a half. I recall that it was dark when we left, because the lights on the automobile which we used were lit, and it was quite dark. 20

*Court.* Was anything said in that conversation regarding the offer of \$10,000?

*Witness.* Absolutely nothing.

Q Or any references made to it? A Absolutely nothing.

Q Were you made aware of the existence of such an offer at that time? A No, sir; and further, I think I suggested that there be some memorandum made relative to the agreement, or the tentative agreement between the parties, and one or the other of the gentlemen, Mr. Lockward or Mr. Evans, said it was a gentlemen's agreement, and it was unnecessary; I don't recall which one said it. 30

Q What tentative agreement are you referring to? A To the suggested division of the stock.

Q Or the trusteeing of the stock? A Yes. And my recollection further is—although of this 40

*Robert C. Lockward, direct.*

I am not certain—that Mr. Thomas C. Provost's name was brought in as Mr. Lockward's counsel at that time. I know within a very short time thereafter I saw Mr. Provost in reference to the matter of the options to the Mutual Tobacco Company.

10 Q Have you give us the substance of that conversation? A Yes, as near as I can recall it; I haven't had opportunity to go over it in my mind, and I am giving it as it comes to me.

*Mr. Harrison.* You may cross examine.

*Mr. Van Blarcom.* No cross examination.

20 *Witness.* I would like to say this, too, that the exhibits consisting of these letters which were put in this morning were not shown to me until at or about the time that the rupture came up in regard to the transfer of the Moore certificate.

DEFENDANTS REST.

ROBERT C. LOCKWARD, complainant, recalled in rebuttal.

30 *Direct examination* by Mr. Van Blarcom.

Q Did Mr. Evans call to your attention the letter which he received from Mr. Moore in relation to the \$10,000 offer? A I am not sure whether he showed it to me or not.

Q Did he say anything to you about it? A I don't think so.

40 Q Did you have any conversation with him about buying Moore's stock? A That was talked of, yes, several times.

*Robert C. Lockward, direct.*

Q What was said about that? A He thought it would be a good scheme if we bought the stock.

Q When was this; after November first? A After November first.

Q What was said then? A He thought it would be a good scheme if we bought that stock and divided it up and had a dummy director. 10

Q Did he ever maintain to you he had the right to buy more stock after November first? A No, I don't think so.

Q And what, as near as you can remember, was said at this conference between you and Mr. Evans and Mr. Harrison? A Just about the same as Mr. Harrison said.

Q What was said; what arrangement was made, if any? A There wasn't any arrangement made. 20

Q What was done? A That I withdraw my offer of \$50,000.

*Court.* Had you disclosed at any time about the \$10,000 offer?

*Witness.* No, I didn't; I know I didn't.

*Court.* Why didn't you?

*Witness.* I don't know.

*Court.* Both offers were in existence at the time of this conference between you three; they were both made on the same day? 30

*Witness.* Yes.

Q But this written withdrawal was not a withdrawal of the \$10,000 offer? A No.

Q What about Moore's option to Tansy; how did that come about? A Moore came to me—I spoke to Moore about it, as I think, and said that Evans and I had given an option to the Mutual Tobacco Company for our stock; well, 40

*Robert C. Lockward, direct.*

John wanted to know where he got off at; I said, "The best thing for you to do is to go and see Tansy and have a talk with him."

Q Why didn't you exercise your right to purchase that stock, under your offer? A Because Moore hadn't offered to take it up.

10 Q Hadn't accepted your offer? A Hadn't accepted my offer.

Q At that time were you and Mr. Evans prepared to sell out everything anyhow; were you prepared to sell out to the Mutual or to Tansy? A Yes.

*Court.* If you sold out you didn't want Moore's stock?

*Witness.* Not if I sold out. I didn't think we would sell out.

20 *Court.* But you hoped you might?

*Witness.* Yes, the price was attractive.

Q And did Moore show you his option after he got it? A No, I don't think so.

*Examination by the Court.*

Q When did you first learn of the Tansy agreement with Mr. Evans? A I should say about two months after the agreement went into  
30 force.

Q From whom did you learn it? A Mr. Tansy told me.

Q Under what circumstances did he come to tell you about it? A He said he didn't think I was getting a square deal; that is what he told me; of course, he might have had a nigger in the fence.

Q After he told you there was such an agreement, did you ever speak to Mr. Evans about it?

40 A Yes.

*Robert C. Lockward, direct.*

Q When; how soon after? A I think it was sometime before the option expired.

Q What was the conversation between you?  
A I told him I didn't think—treat him square on it, we were to share and share alike as far as our number of shares went; I didn't think he was treating me right. 10

Q What did he say? A He said that didn't affect me at all, that was his own business.

Q Then at that time you had the right to criticise his conduct, in view of the private offer that you had made to Moore for his stock, after your talk with Mr. Harrison and Mr. Evans? A I certainly did.

Q Why did you think it necessary to suppress the fact that you had made the offer of \$10,000?

A I didn't think it was necessary. 20

Q Why not? A Because I knew that Mr. Evans was bound to find it out, or would know it, on account of the agreement that they had between Mr. Moore; I didn't think it was up to me to say anything to Mr. Evans. Mr. Moore and Mr. Evans had an agreement together.

Q You knew of that agreement? A Yes.

Q You thought that under the terms of that agreement it would be necessary for Moore to notify Evans that he had such an offer? A Bound to. 30

Q And in that way Evans would find out you were making the offer? A Yes.

Q When Mr. Harrison suggested at this conference that it would be for the interest of all of you, and in view of the interest of the company, that it would be well to trustee the stock, or divide it between you; you didn't then disclose that you were in a position to become the purchaser of the stock from Mr. Moore? A No. 40

*Robert C. Lockward, cross.*

Q Any reason for not disclosing it then and there? Other than what you have given me? A No.

*Cross examination by Mr. Harrison.*

10 Q After you and Mr. Evans gave this joint option to Tansy, under date of December 8, 1915, did you give Mr. Tansy or anyone else another option on your stock? A That was after the first one was given.

Q After the joint—? A Yes.

Q And when? A Very shortly after it expired.

Q That would be in April, about? A Yes, very shortly after.

20 Q And was it at that time that Mr. Tansy brought to your attention the side agreement, so called? A Oh, no.

Q When did he bring it to your attention? A About when the other option was about half expired.

Q And wasn't it because of your learning of the side agreement, so called, that you gave Tansy a subsequent option? A That had something to do with it.

30 *Court.* Did you get a bigger price also, or ask a larger price in the subsequent option?

*Witness.* Yes.

Q And was it at that time that Moore got a subsequent option also? A No, sir; I gave the option for Moore's stock subject to the transfer of the stock—subject to a suit.

40 Q So in the option you gave to Tansy, about the time of the expiration of the joint option, you included Moore's stock with your stock and your wife's stock? A Yes.

*Robert C. Lockward, re-direct.*

Q Did you tell Evans about that? A I am not sure whether I did or not; no, I didn't; I don't think I did; I am not sure of it.

*Court.* Aside from the difficulty that arose between you and Mr. Evans and Mr. Moore, because of the prospects of selling out to the Mutual Company, have there been any other serious difficulties between you and Mr. Evans in the company? 10

*Witness.* Some.

*Court.* Of a serious nature?

*Witness.* Of course, it was all one sided.

Q How serious? A No, I wouldn't say it was serious.

Q Didn't the only grievance—I think you called it—in our conversation on November 2, 1915, relate to a slight difference in salary between you? A Yes. 20

*Court.* The thought I had in mind in asking my question, that apparently Tansy was the one who came in the troubled waters and disturbed the harmony of the situation.

*Witness.* The trouble started before that.

*Court.* Seriously, I mean.

*Witness.* Yes, seriously, with me. 30

*Re-direct examination by Mr. Van Blarcom.*

Q What was it? A It was on a salary question. When the business was incorporated I was to have my house rent free, and I had it as long as my father lived, and just as soon as father died then there was trouble about the house rent; so when I was away on my vacation, Mr. Evans got Mr. Moore in and they voted to cut my salary down ten dollars, and so that Mr. Evans 40

*Robert C. Lockward, re-cross.*

got \$10 a week more than I did; he said that I should pay that for my house rent.

Q Did this agreement that you learned of between Moore and Evans make any feeling between you and Evans? A It made me feel a little bit sore, naturally.

10 Q What did he say to you when he told you about that agreement? A What did Evans say?

Q Yes. A He said, "I haven't been asleep this summer; I have got things about where I want them now," something to that effect.

Q What did that come up over? A I am not sure now, some little thing.

20 *Court.* Since this controversy has arisen between you, the company is being conducted and carried on as formerly by you and Mr. Evans?

*Witness.* Yes.

*Re-cross examination by Mr. Harrison.*

Q And you and he have a salary, or drawing account, of how much a week? A He has \$40 and I have \$30.

30 Q And you have free house rent in one of the company's houses? A Yes.

Q At what rate are your dividends on your stock? A It has been at the rate of about fifteen per cent.

Q Do you know what the earnings of the company on its capital stock has been? A They have been an average of about twenty-two or twenty-two and one-half, but not at this time, though.

40 Q Is that falling off due to the dissension in the company? A No, due to outside causes.

*John C. Moore, direct.*

*Court.* So that your differences of opinion have not been such as to interfere with the proper handling of the business?

*Witness.* No.

JOHN C. MOORE, sworn in rebuttal for complainant.

10

*Direct examination* by Mr. Van Blarcom.

Q You live in Caldwell? A I do.

Q You are employed by the Lane and Lockward Company? A Yes.

Q And have been for how many years? A I think over twenty-five.

Q You are a salesman? A Yes.

Q You are the owner of this certificate of stock, fifty shares? A I was.

20

Q And it appears that on the tenth of April this was transferred to Mr. Lockward; was that signed by you? (Witness shown certificate.) A Yes.

Q At that time what did you receive? A A note from Mr. Lockward.

Q Is this the note, Exhibit C. 3? A Yes, sir.

Q And you have received the payments endorsed on the back of it? A I have.

Q I show you Exhibit C. 2, the offer of Mr. Lockward, and ask you if you received that? A I did.

30

Q When? A The first of November.

Q After you received that Exhibit, dated November 1, what happened about this \$50,000 offer? A This was a regular *bona fide* offer for \$10,000; of course, it has been proved that the offer was bogus. After Mr. Lockward gave me the offer of \$10,000, he came to me with another offer of \$50,000, and that was made out in Brandley's office at Caldwell.

40

*John C. Moore, direct.*

*Court.* Won't you tell me why you ever put such a figure on the stock; what the purpose of that fictitious offer was?

*Witness.* I didn't put the figure; it was an offer.

10 *Court.* Why was it offered; you knew it never was intended to be carried out?

*Witness.* That is very true.

*Court.* What was the scheme behind it all?

*Witness.* It wasn't my scheme.

*Court.* I don't care whose scheme it was; what was it?

*Witness.* I don't know as I can tell you that.

20 Q What was the arrangement; what was the reason for it? A Of the \$50,000; the whole sum and substance of the reason—I believe in being honest and fair at any time—the whole sum and substance was that Mr. Lockward was anxious to get hold of the stock, and he wanted to make the stock offer big enough so he would get the stock.

Q So Mr. Evans wouldn't take it and he could get it? A I believe that must have been it.

30 Q Which offer did you get first? A I got this offer first for \$10,000; the other offer was raised after that.

Q And then what was the next thing that happened? A The next thing that happened?

Q Mr. Lockward came back to see you? A Yes.

40 Q What happened then? After the \$50,000 offer came, what next happened? A We went to Brandley's office, and you took the notification of Mr. Evans which you have there.

*John C. Moore, direct.*

Q And then after that—I think it was the next day— A The next day was Election Day, and everyone knows what happened Election Day—I got defeated; the first time I ever ran in my life, and I got defeated; and in regard to the offer of the \$50,000, Mr. Lockward came up and met me somewhere on the street and gave me the notification, and it was all off. 10

Q What did you hand him back, anything?  
A I handed him back his offer for \$50,000.

Q What about the other offer? A The other offer I still had.

Q Then what happened next?

*Court.* You had said in the meantime, between the receipt of the offer of \$50,000 and the withdrawal, you sent a notice to Mr. Evans that you had such an offer of \$50,000? 20

*Witness.* Yes.

*Court.* And the withdrawal followed?

*Witness.* Yes, and that it was off.

Q Then there was some correspondence between Evans and you? A Yes.

Q There was correspondence between you and Evans regarding the \$10,000 proposition, as I understand it; these letters are here in court? A Yes, but they were not right then and there. 30

Q And you got this letter, Exhibit D. 7, on the twenty-second of November? A Yes, and I answered it.

Q Your answer is here; on the twenty-fifth you wrote the letter Exhibit D. 9? A I did.

Q And then on November 29th you wrote the letter Exhibit D. 11? A Yes, sir.

Q Stating to Mr. Evans that you got this offer for \$10,000? A Yes. 40

*John C. Moore, direct.*

Q And you still had it in your possession?

A Yes, for him to look at if he wanted to.

Q Then this letter of December 2nd you received from Mr. Evans, which is Exhibit D. 12?

A Yes, sir.

10 Q After that time did he ever ask you to see this option? A No, sir.

Q Or to see this offer? A No, sir.

Q Ever say anything to you about it? A No, never spoke a word; I had the option in my pocket for four months, and it is pretty well worn out; I carried it in my inside vest pocket to produce it if he ever wanted it.

Q Did he ever speak to you about it? A No.

Q Or mention the subject? A No.

20 Q After writing you the letter of December 2nd? A Never.

Q Then you gave Mr. Tansy an option, didn't you? A Yes.

Q How did that come about? A If I may be permitted to kind of follow along your lines—the Lane and Lockward Company, which was Mr. Lockward and Mr. Evans, offered their stock to the Tansy people.

30 Q You learned of that? A Yes, and I went to Mr. Lockward and had a talk with him, and he said that the best thing that I could do was to see what I could do with the Mutual Tobacco Company for my stock, and to get their option; which I did later on, and at the same time the offer of November first, he would take care, he would make good; he would stand by his offer and protect me, if the option went through, and if I didn't get an option, but through efforts of mine I got the option with the Mutual Tobacco Company at a sale price of \$200 per share, which was \$10,000 for the fifty shares.

40

*John C. Moore, direct.*

*Court.* When did you accept Mr. Lockward's offer of November first of \$10,000?

*Witness.* I accepted it right away; if the tobacco company didn't take over the option, that he was going to protect me on the fifty shares of my own stock.

*Court.* You accepted it about the time you gave that option to Tansy? 10

*Witness.* Yes. At the same time, under direction of Mr. Lockward, I offered the fifty shares to the Mutual Tobacco Company.

Q And they didn't take up their option? A No, they did not.

Q Then what happened between you and Lockward? A Then Mr. Lockward—the first option—then Mr. Lockward said he would take over my stock, and he had an idea in view to give his stock and my own to the Mutual Tobacco Company. 20

Q. Give another option including yours? A Yes, and at the same time when that was done there was no figuring to do Mr. Evans for his stock whatever, but that was talked over at the same time.

Q But from the time you wrote the letter on November 29, he never said a word about the option at all? A No, sir. 30

Q How often did you see him during that time? A Generally I saw him on Friday or Saturday; Saturday generally; some weeks I was away until Saturday and I don't get into the factory until sometime Sunday; go down to the factory and get my order book and make out my orders and put them on the order book, and sometimes work half of Sunday and Sunday night balancing up, and generally go down 40

*John C. Moore, cross.*

to the factory Monday morning, and quite often saw him on Monday morning, but four weeks out of five I saw him on Saturday.

Q Is your sale of this stock final?

*Mr. Harrison.* Objected to.

10 *Court.* If I find the transaction was as the complainant contends, I would have to find there was a sale. The mere fact that the payment remains to be completed—a thousand and fifty has been paid—there would be no reason why the sale wasn't consummated. Was there any condition?

Q Was there any condition on your transfer of the stock, any string on it? A Not that I know of.

20 *Court.* Except he was to pay you the money?

*Witness.* Yes.

*Cross examination by Mr. Harrison.*

Q You and Mr. Evans during this period were not on very good terms, were you? A What period is that?

30 Q The period beginning with November first, 1915, and continuing up to the present time? A No, I don't think so.

Q You don't think you are on good terms? A No, as far as—I am on good terms all right, but Mr. Evans hasn't recognized me.

Q When you were wandering around with this wallet in your pocket containing this offer of November 1st, 1915, of \$10,000, did you ever show that offer to Mr. Evans? A No, I didn't.

40 Q You had read the letter of December 2nd?  
A. Yes.

*John C. Moore, cross.*

Q Wherein he claimed the right to inspect any offers which you received, hadn't you? A Yes.

Q Why didn't you show him your offer? A I thought if he wanted to see it, he would ask me, the same as me with him; if he wanted to see that offer, I had it in my pocket to show him, but we were not on speaking terms, Mr. Harrison, and that is the reason, I presume, that I didn't show it to him; it was unhandy and it was a little bad to have it come out that way, but it is sad, but it is so. 10

Q He had in the previous letter stated to you that the offer he had received for his stock was subject to your inspection? A Yes, and I answered back, Mr. Harrison, that I couldn't handle his stock and it wasn't necessary for me to inspect it. 20

Q Didn't you think there was a reciprocal right in him to inspect your offer? A Yes, if he wanted to, at any time.

Q And you had it in your pocket but you never showed it? A I was ready to show it whenever he asked to see it.

Q But you waited upon his motion when asked for? A He never showed me his. 30

Q But you knew that he had offered to show it to you? A So I offered to show him.

Q How and when did you offer? A When I gave him notice.

Q That was only upon condition that he ask to see it? A Yes, and it was ready to be seen.

Q You said in effect that you had fixed this price with Lockward at \$50,000 so that Evans would not be in a position to take it, didn't you? A I don't think I said that. 40

*John C. Moore, cross.*

Q What did you say as to the reason why the figure of \$50,000 was fixed? A Mr. Lockward gave me the reason for the offer of \$50,000, and afterwards it was a bogus offer.

Q Did he tell you it was a bogus offer? A He did.

10 Q Or did you tell him? A. There was, I believe, a rebate to be paid either one of them, but that was withdrawn.

Q What was that rebate? A \$40,000.

Q So that you both understood that that was, as he termed it, a fake offer? A Yes.

Q And the purpose of it was to put Evans in a position so that he could not take the stock? A If that is the way you think about it.

Q Isn't that so? A I suppose it is, yes.

20 Q Why do you say that the \$50,000 offer was a bogus offer, and that the \$10,000 offer was a *bona fide* offer? A That was an offer that Mr. Lockward made.

Q Why did you wait from November 1, 1915, until sometime in April, 1916, to complete that offer? A For the simple reason Mr. Lockward told me he would take care of me with that offer and I need not worry, and I would be taken care of with this \$10,000 offer, and then  
30 I didn't want to do anything until the Mutual Tobacco Company option expired, to see how it worked out.

Q That option to the Mutual was given with his knowledge and consent? A. Yes.

Q Why, when this offer of Lockward's was taken, did you give the Mutual Tobacco Company an option? A By his consent, that I had better go there and get the whole option in together, and if I didn't get their option, he would  
40 take care of me on the offer of \$10,000.

*John C. Moore, cross.*

Q So with his consent to agree you would try first to sell your stock to the Mutual? A Yes.

Q And the understanding between you and Lockward was that if you could sell it to the Mutual you were to do so? A Yes.

Q But if you didn't sell it to the Mutual, the offer was to sell him? A Yes, sir, that was it. 10

*Court.* Was your offer to the Mutual for a larger sum?

*Witness.* No, sir, just the \$10,000; I didn't try to take any advantage at all.

Q What about Lockward's offer to the Mutual wherein he included your stock? A He had taken my stock then, Mr. Harrison.

Q Had you talked with Tansy about this? A The Mutual Tobacco Company had my option. 20

Q You had talked to him about it? A Yes.

Q Were you present when Tansy told Lockward about the so-called side agreement? A No, I was not; I knew there was something, but I didn't know what.

Q When you said "I accepted his offer if the Mutual deal didn't go through," what did you mean by that condition, "if the Mutual deal didn't go through"? A What did I mean? I don't understand you. 30

Q Did you not say in answer to a cross question, I think it was, that you accepted Mr. Lockward's offer right away, if the Mutual deal didn't go through? A I told him that I would take his offer subject to the notification which had to follow, and he understood that all the way through; that was foremost through my mind, that the notification had to go to Mr. Evans and had to go through legitimate channel. 40

*John C. Moore, cross.*

Q You told Mr. Lockward about it? A Yes.

Q You told him about your correspondence with Evans? A Most assuredly, I have the different notifications I gave.

10 Q So you kept him advised of all your dealings with Evans during this whole time? A I think I did.

Q And you showed him that last letter of December 2nd, wherein Evans claimed the right to inspect your offer? A Yes, I think I did; that was a matter between myself and Mr. Evans; it wasn't between Mr. Lockward anyhow.

20 Q But he knew about it? A I think he did; I think we were working on that plan, straight plan; there was no sneaking around the bush about it.

Q You and Lockward were in harmony in this whole thing? A Yes, sir, because Mr. Lockward tried to take care of me in the final wind-up, but Mr. Evans did not; he tried to throw me overboard.

Q In what way did he try to throw you overboard? A "Let Moore shift for himself; we will take over the Mutual Tobacco Company stock and let Moore shift for himself."

30 Q And then you went to Tansy? A Yes, and gave him one option.

Q. Shortly after the joint option was given by Lockward and Evans? A Yes, to protect myself.

Q And shortly after the expiration of that option, sometime in April, you gave still another option? A I did not.

40 Q But with your consent gave an option? A I sold my stock to Mr. Lockward, and Mr. Lockward gave the option as owner; here are the notifications (indicating).

*John C. Moore, cross.*

Q Was that option given by Lockward before the actual delivery of the stock by you to him? A No sir.

Q Before or after you signed the certificate? A After the notification.

*Court.* Mr. Lockward gave an option finally in which he included his own, Mrs. Lockward's stock and your stock? 10

*Witness.* Yes.

*Court.* Mr. Harrison is trying to find out if he gave the option including your stock after you had transferred the stock to him or before you had transferred it?

*Witness.* I think it was when he owned it; I don't think he gave it away until he owned it; I don't think he gave the option to the Tansy people until he owned my stock. 20

Q You are not sure of that? A I am quite sure of that. I think you will find it is straight at that.

Q Has any demand been made by you upon Lockward for the payment of any moneys on this not of April 10, 1916? A Nothing at all, only Mr. Lockward has made two payments; I have never made a demand, because I trusted him implicitly. 30

Q At the time of the giving of this note, Exhibit C. 3, April 10, 1916, you expected that the Mutual or Tansy option would be exercised, did you not? A I thought it would, yes, sir, with all good faith.

Q And you expected that out of the proceeds received for the Lockward stock, you would be compensated for your fifty shares of stock, didn't you? A Yes, I did. 40

*John C. Moore, cross.*

Q And you expected to receive from Lockward whatever he received for those fifty shares of stock? A Yes.

Q So that if he received \$200 or \$250 a share, you were to get it? A Yes.

10 Q And if he received in addition to that stock of the Mutual Company you were to get your ratable share of that, too? A Whatever the stock would bring.

Q So that under this agreement you still claimed to be entitled to whatever Lockward might get from the Mutual for your fifty shares of stock? A Yes, sir.

*Court.* But you were to have not less than \$10,000?

20 *Witness.* Yes, that is what Mr. Lockward said the stock was worth when he gave it to me, and I worked hard and paid for it myself, and the dividends I have worked hard for the company; it doesn't make any difference what they say.

Q Mr. Lockward, Sr., told you that? A Yes, my best friend on earth.

30 Q Why didn't you put something in this note, so that there would be a guaranty on Lockward's part to pay you at least a minimum of \$10,000? A I think the guaranty is there; the note is there; you will take Mr. Lockward's note for \$10,000 yourself, if you had a chance.

Q I am not engaged in the banking business. A You have had quite some credit possibly; I have got a little credit possibly all my life. I think you got about as much and maybe a little bit more, and you would take his note for \$10,000.

40

*John C. Moore, cross.*

Q But why did you not put a provision to that effect in it? A Mr. Harrison, I thought that was perfectly straight; Mr. Lockward was honorable and comes from an honorable family, and if they say they will do a thing they will do it, and witnessed by his wife, and I thought his suggestion that there was any extra come- 10  
back to the Mutual Tobacco Company, if they ever did materialize—but they died the death of a rat—I would get my percentage with the rest.

Q So the amount in case of the Mutual deal going through was uncertain? A I had quite a good deal of faith, from what I had learned; I had overheard at the factory that Mr. Evans had made great plans managing as vice-presi- 20  
dent of the Mutual Company, and also heard from the Red Hood man, a Mr. Dunning, and I thought it looked very flowery.

Q So you thought that would go through?  
A Yes.

Q But you knew that the amount to be received by you, in case of the deal going through, was uncertain, didn't you; that is that Mr. Lockward might receive for you \$200 a share or \$250 a share, or some other amount, plus some capital stock of the corporation? A Yes, 30  
I knew that, and I hoped the deal would go through, and the Tobacco Company would take it over, and that was so much the better, the same as the rest of them, they wanted it.

*Court.* Who owns this stock now, you or Mr. Lockward?

*Witness.* Mr. Lockward.

Q This dividend received May 15, 1916, was received by whom? A By me. 40

*Lida L. Lockward, direct.*

Q By check of the company to your order?  
A Yes, sir; and credited on the note of Mr. Lockward.

Q This credit of March 26, 1917, of \$300? A That was a check on account Mr. Lockward gave me; he thought he would like to pay me  
10 some on account of the note, and I said: "All right, Robert, I will take it and put it in the saving account."

Q Why didn't you put it in your active account? A I wanted to put it there instead.

Q Was that check upon the Citizens' National Bank? A Yes, I think it was; I am quite sure it was; I wouldn't say for sure.

*Re-direct examination by Mr. Van Blarcom.*

20 Q. Did I understand you to say that the stock was transferred and the note given before your option ran out, or afterwards—before the option you gave in December? A What do you mean? The stock wasn't transferred when the option was given, no.

Q You gave an option to Mr. Tansy? A Yes.

30 Q Was that option still in force at the time you took Mr. Lockward's note and turned your stock over to him? A I think the option had expired.

LIDA L. LOCKWARD, sworn for complainant.

*Direct examination by Mr. Van Blarcom.*

Q You are the wife of Robert C. Lockward?  
A Yes.

Q You witnessed the transfer of the certificate? A Yes.

40 Q And the note? A Yes.

*Lida L. Lockward, direct.*

Q Where was this transaction? A In the back parlor at our home.

Q And what was done at that time as near as you can remember? A Simply that the papers were produced and I saw Mr. Moore sign his name, and signed my name as a witness to that signature.

10

Q Who drew the note? A That was already drawn when I saw it.

*Mr. Harrison.* Do you know whose handwriting it is in?

*Witness.* That is in my husband's handwriting.

BOTH SIDES REST.

*Mr. Harrison.* I now make a tender of the sum of \$10,000 for the fifty shares of stock represented by Exhibit C. 1, with such interest as, under the circumstances, may seem to be proper.

20

*Court.* From what date?

*Mr. Harrison.* I am in doubt as to what date the interest will run from, but if necessary we will make it from November 1, 1915.

*Mr. Van Blarcom.* I don't make any admission that there was any tender made.

30

*Court.* This is the only tender made by Mr. Evans to Mr. Moore or Mr. Lockward, either for himself or for Mr. Moore.

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*Exhibits C. 1, C. 2 and C. 3.*

EXHIBIT C. 1.

Is a stock certificate, a true copy of which is attached to the bill of complaint, and marked "Exhibit A," (see page 4).

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EXHIBIT C. 2.

Tel 234 R.

John C. Moore,  
Caldwell, N. J.

Nov. 1, 1915.

J. C. Moore, Caldwell, N. J.:

Dear Sir—I hereby offer you Ten Thousand Dollars for your 50 shares of Lane & Lockward Co. stock you now hold.

20

ROBERT C. LOCKWARD.

EXHIBIT C. 3.

I. L. Evans,  
Pres. & Treas'r.

R. C. Lockward,  
Vice Pres. & Secty.

Established 1806.

LANE & LOCKWARD COMPANY,

30

Manufacturers of  
TOBACCO AND CIGARS,  
Caldwell, Essex Co.

New Jersey, April 10th, 1916.

On demand I, Robt. C. Lockward, agrees to pay John C. Moore ten thousand dollars (\$10,000) for fifty (50) shares of stock of Lane and Lockward Co., a corporation of New Jersey. The same stock now standing in his name on the stock book of said Co.

40

*Exhibit D. 1.*

The said John C. Moore agrees to credit to the note of the said Robt. C. Lockward the amount of any dividends that might be payed to him before the stock is transferred on the books of Lane and Lockward Co. to Robt. C. Lockward.

If the Mutual Tobacco Co. takes up the option which is about to be signed by Robt. C. Lockward and Jas. C. Tansy the said John C. Moore is to get the same proposition per share as Robt. C. Lockward for the fifty shares now being transferred to Robt. C. Lockward from John C. Moore. 10

ROBERT C. LOCKWARD.

Witness:

LIDA L. LOCKWARD.

May 15/16 Credit by cash on note.....750.00  
Mar. 26, 1917, Credit by check on note....300.00 20

## EXHIBIT D. 1.

I. L. Evans, R. C. Lockward,  
Pres. & Treasr. Vice Pres. & Sect'y.

Established 1806.

LANE & LOCKWARD COMPANY,  
Manufacturers of  
TOBACCO AND CIGARS, 30  
Caldwell, Essex Co.

New Jersey, November 2, 1915.

Mr. John C. Moore, Caldwell, New Jersey:

Dear Sir—I hereby withdraw the offer made to you under date of November 1, 1915, for the fifty (50) shares of stock of the Lane and Lockward Company now standing in your name on the books of said company.

Yours truly,

ROBERT C. LOCKWARD. 40

*Exhibit D. 2.*

EXHIBIT D. 2.

Walter G. Brandley  
Attorney at Law  
Caldwell, N. J

November 1st, 1915.

10 Mr. Isaac L. Evans,  
Washburn Place,  
Caldwell, New Jersey.

Dear Sir:

I have received an offer for the purchase of the shares of capital stock in the Lane and Lockward Company now held by me which reads as follows:

November 1st, 1915.

20 "Mr. John C. Moore,  
Caldwell, New Jersey.

Dear Sir:

I hereby offer you the sum of fifty thousand dollars for the fifty shares of stock of the Lane and Lockward Company now standing in your name on the books of the said company. This offer to be accepted or rejected within five days from the date hereof.

Yours very truly,

(Signed)

"

30 In accordance with the terms of the agreement entered into between you and me, dated June 14th, 1913, I hereby offer the said fifty shares of stock for sale to you at the sum of fifty thousand dollars, this offer to remain open for twenty-four hours from the date of its delivery to you; should you fail to accept or reject this offer of sale within twenty-four hours from this date, I shall dispose of the said shares to the bidder making the offer quoted above. Kindly address any  
40 communication which you may wish to make to

*Exhibit D. 3.*

my attorney, W. G. Brandley, 285 Bloomfield avenue, Caldwell, who has authority to act for me in this matter.

Yours very truly,  
JOHN C. MOORE.

10

## EXHIBIT D. 3.

IN CONSIDERATION of the sum of One (\$1) Dollar and other good and valuable considerations, to ROBERT C. LOCKWARD and ISAAC L. EVANS, of the Borough of Caldwell, Essex County, New Jersey, each in hand paid, receipt whereof is hereby acknowledged, the said ROBERT C. LOCKWARD hereby agrees to sell, assign, transfer and set over to JAMES C. TANSY of 19 South William street, Borough of Manhattan, New York City, or his assigns, two hundred and ninety-five (295) shares of the capital stock of LANE AND LOCKWARD COMPANY, a New Jersey corporation, for the sum of Seventy-one Thousand Two Hundred Ninety-one and 66/100 (\$71,291.66) Dollars, lawful money of the United States of America, and Fourteen hundred and seventy-five (1475) full paid and non-assessible shares of the capital stock of the MUTUAL TOBACCO COMPANY, INC., a Delaware corporation; and the said ISAAC L. EVANS hereby agrees to sell, assign, transfer and set over to JAMES C. TANSY, or his assigns, Three hundred and five (305) shares of the capital stock of LANE AND LOCKWARD COMPANY, a New Jersey corporation, for the sum of Seventy-three Thousand Seven Hundred and Eight and 34/100 (\$73,708.34) Dollars, lawful money of the United States of America, and Fifteen hundred and twenty-five (1525) full paid and non-assessible

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30

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*Exhibit D. 3.*

shares of the capital stock of the MUTUAL TOBACCO COMPANY, INC., a Delaware corporation.

10 This option shall expire four months from the date hereof unless the said JAMES C. TANSY, or his assigns, shall, at least ten days before said expiration, give notice in writing of the acceptance of this option, in which case the transaction is to be completed, and the said shares of stock of the undersigned in said LANE AND LOCKWARD COMPANY to be delivered within ten days thereafter, it being understood and agreed that the time herein expressed is of the essence of this option.

20 It is understood and agreed that in accepting this option, said JAMES C. TANSY assumes no responsibility or liability to purchase said shares of stock of the LANE AND LOCKWARD COMPANY, unless he, or his assigns, shall elect to do so by written notice as above provided; and that in case of assignment, this instrument and all its parts and provisions shall inure to the benefit and run in favor of and be obligatory upon such transferee, and JAMES C. TANSY shall be free from liability therein and thereunder to the same purport and effect as though such transferee had originally been made the purchaser herein.

30 The options granted hereunder are mutually dependent, and shall be closed and completed simultaneously.

This agreement shall bind the heirs, representatives, successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the said ROBERT C. LOCKWARD and ISAAC L. EVANS have hereunto set their hands and seals this eighth day of December, nineteen hundred and fifteen.

40

R. C. LOCKWARD. (L. S.)

I. L. EVANS. (L. S.)

*Exhibit D. 4.*

## EXHIBIT D. 4.

In consideration of the sum of One (\$1) Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned, ROBERT C. LOCKWARD of Caldwell, New Jersey, hereby agrees to sell, assign, transfer and set over to JAMES C. TANSY of 19 South William street, Borough of Manhattan, New York City, or his assigns, Two hundred and ninety (290) shares of stock of LANE & LOCKWARD COMPANY, a New Jersey corporation for the sum of Fifty-eight Thousand (\$58,000) Dollars and Three Thousand Eight Hundred Sixty-six and  $\frac{2}{3}$  ( $3866\frac{2}{3}$ ) shares of capital stock of the MUTUAL TOBACCO COMPANY, INC., a Delaware corporation.

10

This option shall expire four months from the date hereof unless the said JAMES C. TANSY, or his assigns, shall before that time give notice in writing of his acceptance thereof, in which case the transaction is to be completed and the shares of stock of the undersigned to be delivered within ten days thereafter.

20

It is understood and agreed that in accepting this option said JAMES C. TANSY assumes no responsibility or liability to purchase said shares of stock unless the said JAMES C. TANSY, or his assigns, shall elect so to do by written notice and that in case of assignment, this instrument and all its parts and provisions shall inure to the benefit and run in favor of and be obligatory upon such transferee and JAMES C. TANSY shall be free from liability therein and thereunder to the same purport and effect as though such transferee had originally been made the purchaser herein.

30

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*Exhibits D. 5 and D. 6.*

This agreement shall bind the heirs, representatives, successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the said ROBERT C. LOCKWARD has hereunto set his hand and seal this 18th day of November, 1915.

10

ROBERT C. LOCKWARD. (L. S.)

## EXHIBIT D. 5.

Exhibit D. 5 is an option, dated November 18, 1915, in the same form as Exhibit D. 4, except that it is given by Lida L. Lockward to James C. Tansy, for the purchase of five (5) shares of stock of Lane & Lockward Company for the consideration of \$1000.00 and sixty-six and two-thirds shares of capital stock of the Mutual Tobacco Company, Inc.

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## EXHIBIT D. 6.

Agreement made this fourteenth day of June, 1913, between John C. Moore of the Borough of Caldwell, in the County of Essex and State of New Jersey and Isaac L. Evans of the Borough of Caldwell, in the County of Essex and State of New Jersey—

30

I, John C. Moore, for and in consideration of the sum of one dollar (and other valuable considerations) to me in hand paid by Isaac L. Evans, do hereby give to the said Isaac L. Evans the first privilege of purchasing the Fifty Shares of the Capital Stock of the Lane & Lockward Co., a corporation, doing business at Caldwell, in said County and State, now held by me and standing in my name on the books of said Cor-

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*Exhibit D. 6.*

poration, and I hereby agree that I will not at any time transfer or assign my said shares to any person or persons or corporation, until after I have first in writing offered them for sale to the said Isaac L. Evans at the same price which outside parties may in writing have offered for the same.

10

And I do hereby further agree that during the period of five years from the date hereof, I will in person attend any and all annual, special or other meetings of the Stockholders of the said Lane & Lockward Co. convened for any purpose whatever, but should I be unable to attend any meetings during said period, I will at the request of the said Isaac L. Evans sign any proxy or proxies to the said Isaac L. Evans as may be necessary and sufficient to authorize him to vote on said stock at such meeting or meetings at which I cannot personally attend, and furthermore I agree that at any such meetings at which I may be present, I will vote my stock for such officers and directors as the said Isaac L. Evans shall suggest, to all of which I hereby bind myself, my heirs, executors and administrators.

20

And I, the said Isaac L. Evans do for myself, my heirs, executors and administrators hereby agree in consideration of the foregoing, that I will reserve for the said John C. Moore, Fifty shares of the Capital Stock of said Lane & Lockward Co. now held by me and standing in my name on the books of the said corporation, until after I have first in writing offered them for sale to the said John C. Moore at the same price which outside parties may in writing have offered for the same.

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*Exhibit D. 7.*

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

ISAAC L. EVANS. (L. s.)

JOHN C. MOORE. (L. s.)

Attest:

10 H. R. STRUBLE.

## EXHIBIT D. 7.

I. L. Evans,  
Pres. & Treas'r.

R. C. Lockward,  
Vice Pres. & Sect'y.

Established 1806.

LANE & LOCKWARD COMPANY,

Manufacturers of

20 TOBACCO AND CIGARS,

Caldwell, Essex Co.

New Jersey, November 22nd, 1915.

Mr. John C. Moore,  
Caldwell, N. J.

Dear Sir:—

I have been asked to execute an option for the sale of the capital stock of the Lane and Lockward Company now held by me and standing in my name on the books of said corporation.

30 The option prepared by the bidder for the above stock is in my possession subject to your inspection, which will make known to you the price offered per share.

In accordance with the terms of the agreement dated June 14th, 1913, I requested you to make me an offer for the purchase of the fifty (50) shares involved, on Nov. 1st of this year, at which time you informed me you did not wish to purchase any additional stock of the Lane and Lockward Company.

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*Exhibit D. 8.*

As further evidence of my desire to carry out the terms and intent of the agreement above mentioned, I again offer you fifty (50) shares at the same price per share I shall receive from the prospective purchaser. Should you fail to indicate your desire to take advantage of this offer within forty-eight hours after the receipt of this letter and enter into a contract for the purchase of same within three days from the receipt of this letter, I shall consider myself free to execute the option first mentioned. 10

Yours truly,

ISAAC L. EVANS.

## EXHIBIT D. 8.

HOTEL MITCHELL, 20  
A. E. Powers, Prop.  
Port Jervis, N. Y.

November 24, 1915.

Mr. Isaac Evans,  
Caldwell, N. J.

My Dear Sir:—

I am in receipt of your letter of the 22nd inst., just received 4 P. M., and have carefully noted "Contents" at this moment, i am not decided on what reply to make to your proposition, as you do not state at what price you will sell the stock. 30

I would like to give your letter careful consideration, but i would desire more than Forty-eight hours to do this.

Beleave me

Respectfully yours,

JOHN C. MOORE.

This letter is written in Duplicate.

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*Exhibit D. 9.*

## EXHIBIT D. 9.

Telephone 234-R.

JOHN C. MOORE  
Caldwell, N. J.

Nov. 25, 1915.

10 Mr. Isaac L. Evans,  
Caldwell, N. J.

Dear Sir:—

In regard to your letter of Nov. 22nd, 1915, would say, I have carefully looked into the matter and would state, I cannot buy your stock just now, and in accordance with the terms of the agreement dated June 14th, 1913, I offer to sell you my fifty (50) shares of stock of the Lane, Lockward Co.

20 And as further evidence of my desire to carry out the terms and intent of the agreement above mentioned, I again offer you my fifty (50) shares of the stock of the Lane, Lockward Co. now held by me at the same price per share as I could secure from other parties.

30 Should you fail to indicate your desire to take advantage of this offer within forty-eight hours after the receipt of this letter, and enter into a contract for the purchase of the said stock within three days from the receipt of this letter, I shall consider myself free to dispose of this stock to other parties.

Yours truly,  
JOHN C. MOORE.



*Exhibit D. 12.*

our contract, and cannot see where my letter of Nov. 25th does not comply with the contract, and in as much as you do not state in your letter wherein I am not complying with the contract, I herewith offer to sell you the fifty (50) shares of stock which I hold in the Lane & Lockward Com-

10 pany at the price of ten thousand dollars (\$10,000), which is two hundred dollars (\$200) a share. I hereby advise you that I have received an offer in writing for these shares at a price of \$10,000, and in accordance with the terms of our agreement of June 14, 1913, I am giving you the first privilege of purchasing these shares.

If you desire to avail yourself of this privilege, will you kindly do so, by letting me hear from you not later than Friday, December 2nd, at ten A. M.

20 Yours truly,  
JOHN C. MOORE.

## EXHIBIT D. 12.

I. L. Evans, R. C. Lockwood,  
Pres. & Treas'r. Vice Pres. & Sec'y

Established 1806.

30 LANE & LOCKWARD COMPANY,  
Manufacturers of  
TOBACCO AND CIGARS,  
Caldwell, Essex Co.,

New Jersey, Dec. 2nd, 1915.

Mr. John C. Moore,  
Caldwell, N. J.

Dear Sir:—

Your letter of the 29th ult in which you refer to an offer of \$10,000 for the Lane and Lock-

40 ward Co. stock owned by you.

*Exhibits D. 13 and D. 14.*

It would appear that this stock has depreciated markedly in value in thirty days, based on your letter of that period, in which you claimed to have received an offer of \$50,000 for the same stock.

However, I claim the right to inspect your alleged offer, before giving you my decision as to the purchase by me of this stock. 10

Yours truly,  
ISAAC L. EVANS.

## EXHIBIT D. 13.

Exhibit D. 13 is an option, dated November 18, 1915, in the same form as Exhibit D. 4, except that it is given by Isaac L. Evans to James C. Tansy, for the purchase of three hundred and five (305) shares of stock of Lane & Lockward Company, for the consideration of \$61,000 and four thousand and sixty-six and two-thirds shares of capital stock of the Mutual Tobacco Company, Inc. 20

## EXHIBIT D. 14.

In consideration of the services performed by ISAAC L. EVANS in securing the option of ROBERT C. LOCKWARD for Two Hundred and Ninety-five (295) shares of the capital stock of LANE AND LOCKWARD COMPANY and in the event that JAMES C. TANSY of 19 South William Street, Borough of Manhattan, New York City, shall avail himself of the options given to him by said ROBERT C. LOCKWARD and ISAAC L. EVANS, both of Caldwell, New Jersey, for the purchase of their Six hundred (600) shares of the cap- 30  
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*Exhibit D. 15.*

ital stock of LANE AND LOCKWARD COMPANY, a New Jersey corporation, then and in that event only said JAMES C. TANSY hereby agrees to transfer and deliver to ISAAC L. EVANS of Caldwell, New Jersey, at the time of delivery of the LANE AND LOCKWARD COMPANY'S stock here-  
 10 inbefore mentioned, Five Thousand (5,000) shares of stock of the MUTUAL TOBACCO COMPANY, Inc., a Delaware corporation, of the par value of Ten (\$10) Dollars each, in consideration of which said ISAAC L. EVANS promises and agrees to identify himself with said MUTUAL TOBACCO COMPANY, INC., and perform such services for said company as the directors thereof shall determine and require and at a salary to be mutually agreed upon.

20 IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this eighth day of December.

ISAAC L. EVANS, (L. S.)  
 JAMES C. TANSY, (L. S.)

## EXHIBIT D. 15.

30 Exhibit D. 15 is an option, dated December 8, 1915, in the same form as Exhibit D. 4, except that it is given by John Charles Moore to James C. Tansy for the purchase of fifty (50) shares of stock of Lane & Lockward Company for the consideration of \$10,000.

*Exhibit D. 15.*

EXHIBIT D. 15.

Telephone 234-R.

JOHN C. MOORE.

Caldwell, N. J., Nov. 1, 1915.

Under an agreement between said Isaac Lane  
Evans, of Caldwell, N. J., and said John C. 10  
Moore, of Caldwell, N. J., and that I, John C.  
Moore do first offer for sale my fifty shares  
of stock in the Lane & Lockward Co. to said  
Isaac Lane Evans.

This bid must be in writing.

JOHN C. MOORE,

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*Opinion.*

**Opinion.**

Filed Aug. 6, 1917.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ROBERT C. LOCKWARD,  
*Complainant,*  
*and*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants.*

*Submitted*  
*June 28th,*  
*1917.*

*Decided July*  
*25th, 1917.*

20 Messrs. Raymond, Mountain, Van Blarcom &  
Marsh, for complainant.

Messrs. Church & Harrison, for defendants.

FOSTER, V. C.

30 This bill is filed to compel the transfer of  
shares of stock on the books of the defendant  
company and the issuance to complainant of a  
new certificate therefor. The answer for the  
company presents no defence to the action. The  
answer of the defendant, John C. Moore, in ef-  
fect admits complainant's right to the relief  
sought, and the defendant, Isaac L. Evans,  
by his answer denies complainant's right to  
this relief, and by his counter-claim asks that  
the shares of stock may be transferred to him.

The controversy is between Lockward and  
Evans and arises out of the following circum-  
stances:

The Lane & Lockward Co., which was or-  
ganized by complainant's father over twenty-

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*Opinion.*

five years ago, is engaged in the manufacture of tobacco at Caldwell in this State; it has a capital of \$100,000, divided into 1,000 shares, of which 650 have been issued and of which Evans owns 305 shares; complainant and his wife, 295 shares, and the 50 shares in question stand in the name of Moore, who has been a salesman of the company for many years, and who purchased these shares years ago from complainant's father for their par value of \$5,000. The company is a very prosperous one and for years has earned dividends of about twenty per cent.

10

Evans is the president and treasurer, and complainant is the secretary of the company, and these two and Moore were its directors.

In the spring of 1913 complainant and Evans had some trouble over the unsuccessful efforts of complainant to have his brother-in-law employed by the company. This matter was not entirely adjusted when complainant left for his vacation. During his absence and on June 14, 1913, Evans obtained from Moore an agreement in writing, by which Moore gave Evans the first privilege of purchasing his fifty shares of stock, and he agreed "not at any time to transfer or assign my said shares to any person, persons or corporations, until after I have first in writing offered them for sale to the said Isaac L. Evans at the same price which outside parties may in writing have offered for the same." Moore further agreed for the period of five years to vote for such officers of the company as Evans should suggest, and also agreed to give Evans his proxy to vote on the stock at any meetings of the company which Moore was unable to attend. Evans in consideration of these

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*Opinion.*

matters agreed to reserve for Moore from his holdings of stock fifty shares "until after I have first in writing offered them for sale to said John C. Moore at the same price which outside parties may in writing have offered for the same."

10 On complainant's return from his vacation he and Evans renewed their disputes, and Evans informed complainant of his agreement with Moore.

20 Sometime in the fall of 1915 one Tansy undertook the promotion of a concern called the Mutual Tobacco Company, which was to purchase the property or stock of a number of companies including the Lane & Lockward Company. Evans, complainant, and Moore each gave Tansy an option to purchase their stock at a uniform price. At the same time, Evans made with Tansy, without the knowledge of complainant or Moore, what has been termed "a side agreement," by which he was to receive 5,000 shares of stock in the Mutual Company, and was elected a vice-president of it; and in consideration was to identify himself with it and perform such duties as its directors might require, at a salary to be mutually agreed upon. This agreement is dated December 8, 1915, but it does not appear when complainant and Moore first learned of it.

30 On November 1, 1915, Moore delivered to Evans a letter in which he notified him that he had an offer of \$50,000 for his fifty shares of stock and he requested Evans to exercise his option to purchase the stock under the agreement of June 14, 1913, within twenty-four hours. At a conference the following day, complainant acknowledged to Evans that he had made the offer, and that it was a fictitious one and

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*Opinion.*

he withdrew it; and they then talked over what they called a "gentleman's agreement," under which they were to divide the stock of the company between them and place qualifying shares in the name of a dummy. Complainant and Moore say that on November 1, 1915, when the bogus offer of \$50,000 was made, complainant also made an offer, which was *bona fide*, of \$10,000 to Moore for his stock, but this fact was not made known to Evans. 10

On November 22, 1915, Evans wrote Moore that he had been requested to give an option on his stock, and offered Moore, presumably in accordance with the agreement of June 14th, 1913, fifty shares for the same price as that for which he was to give the option. Moore was unable to buy the stock and in return offered his shares of stock to Evans, who under date of November 27th, notified Moore that he was not complying with the June 14, 1913, agreement. Two days later Moore wrote Evans that he had received an offer in writing for his stock at a price of \$10,000, without disclosing it was an offer from complainant, adding "and in accordance with the terms of our agreement of June 14th, 1913, I am giving you the first privilege of purchasing these shares." On December 2nd Evans wrote Moore claiming the right to inspect the offer before giving his decision, but he never inspected or asked to inspect the offer. Moore states he accepted this offer of \$10,000 at the time that he gave an option on the stock for four months, at complainant's direction, to Tansy for the Mutual Company. This appears to have been about December 8th. 20 30 40

*Opinion.*

On April 10, 1916, two days after the expiration of the option to the Mutual Company, complainant under his offer had transferred to him from Moore the 50 shares of stock for \$10,000, paying for the same by his promissory note, on which payments have since been made, including a payment of \$750 received by Moore as dividends on the stock, and credited by him on the note. Complainant as secretary of the company made out a new certificate to himself for the fifty shares and asked Evans to sign it as president and treasurer. This Evans promised to do on the following day, and the next morning he refused to sign the new certificate, giving as his reason that he didn't think the Court of Chancery would allow him to sign it; and sometime later the bill was filed.

From what has been stated, it is apparent that there has been since 1913 an effort on the part of Evans and complainant to secure control of the company; that they have not acted in good faith towards each other, or towards Moore; and that the latter has shifted his allegiance from time to time from one to the other. Evans was the first to attempt to secretly secure the Moore stock, and through it, or through Moore's agreement to vote as Evans suggested, to obtain control of the company. Complainant on learning of this and of the secret bargain that Evans had made with the Mutual Company for a large block of stock and a salary for himself, then secretly undertook to acquire Moore's stock. Moore at this time was apparently under complainant's influence and willingly assisted him in his scheme and enabled him to acquire the stock on easy terms of payment.

*Opinion.*

The contention that Evans, after Moore by his letter of November 29th, had notified him of the offer of \$10,000, was justified in taking no action because Moore had not disclosed the name of the party making the offer, or submitted the offer to Evans for inspection, is not supported by anything in the agreement of June 14th, 1913, on which Evans bases his claim. In fact, it is very doubtful if the terms of this agreement relate in any way to any offer made by complainant or his wife to Moore for the purchase of his stock. They are both stockholders of the company, and this agreement, admittedly prepared at Evans' instance, requires Moore not to transfer his stock until he has first given Evans the privilege of buying it "at the same price which outside parties may in writing have offered for the same." Who were meant by the expression "outside parties" is not stated. If this means parties outside of the company, *i. e.*, not stockholders, its purpose can be readily understood. If it was intended to apply to anyone making an offer for the stock, I do not see why it was used. It may have been employed to satisfy Moore, who was under some obligations to the Lockward family, that the option to Evans would not prevent him from dealing about the stock with complainant who was an outsider of the company as a stockholder and officer. Whatever the reason for the use of this expression was, I am satisfied that Moore by his letter to Evans of November 29th, performed all that the agreement of June 14th, 1913, required him to do; that Evans after the receipt of this notice did not, within a reasonable time, exercise his privilege of purchasing

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*Opinion.*

the stock, and, in fact, made no attempt to do so until the day of the hearing in open court—long after the sale and transfer of the stock by Moore to complainant had been consummated.

10 If Evans' construction of the agreement between himself and Moore is correct, he has an ample remedy at law, for the breach of contract which he claims Moore committed by sale and transfer of the stock to complainant, and I am unable to adopt the view strongly urged on behalf of Evans, that when complainant purchased the stock, with knowledge of the agreement between Evans and Moore, he there-  
 20 by became a constructive trustee of the stock for Evans and should be compelled to perform his trust by transferring the stock to Evans. There might be some force in this contention, if Evans had attempted to exercise his rights under the contract within a reasonable time after Moore's notice to him of the offer he had received for the stock.

The power of the court to compel a transfer of stock on the books of a corporation in a case of this nature has been recognized, and rests on the theory that complainant is the  
 30 equitable owner of the stock and seeks by the transfer to consummate a legal title. *Archer v. American Water Works Co.*, 50 Eq. 33-50; *Reilly v. Absecon Land Co.*, 75 Eq. 71; *Morris v. Hussong Dyeing Machine Co.*, 81 Eq. 256.

I will advise a decree pursuant to the prayer of the bill.

*Final Decree.***Final Decree.**

Filed September 18, 1917.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>ROBERT C. LOCKWARD,  <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ISAAC L. EVANS and LANE &amp;        LOCKWARD COMPANY,  <i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill, &amp;c.</i></p> <p><i>Final Decree.</i></p>
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This cause coming on to be heard in the presence of Andrew Van Blarcom, of counsel with the complainant, and J. Henry Harrison, of counsel with the defendants, and the pleadings, proofs and arguments of the respective counsel having been duly heard and considered, and it appearing to the court that the complainant is entitled to have transferred to him on the transfer books of Lane & Lockward Company, one of the defendants, 50 shares of the capital stock of said defendant company standing in the name of John C. Moore, and to have issued to him upon the surrender of the stock certificate mentioned and set forth in the bill of complaint, a new stock certificate for said shares, executed by the proper officer or officers of said company under its corporate seal, and that the said complainant is entitled to the relief prayed for by him in his bill of complaint, and it further appearing that the defendant, Isaac L. Evans, is not entitled to the relief prayed for by him in his counter-claim

*Final Decree.*

against the complainant and John C. Moore, defendant;

10 IT IS, THEREUPON, on this fourteenth day of September, 1917, by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, that upon the  
 20 surrender to said Lane & Lockward Company of certificate No. 11 for 50 shares of the capital stock of Lane & Lockward Company standing in the name of John C. Moore, and assigned by said John C. Moore to the complainant, the said Lane & Lockward Company and Isaac L. Evans, the president and treasurer thereof, or such other proper officer or officers, execute under the corporate seal of said company and deliver simultaneously to the complainant in the place and  
 20 stand of the said stock certificate for 50 shares, a new stock certificate in the name of the complainant for 50 shares of the capital stock of the said defendant company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the counter-claim of the defendant, Isaac L. Evans, against the complainant and John C. Moore, be dismissed.

30 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the said Lane & Lockward Company and the said Isaac L. Evans, or the other proper officer or officers of the said company, shall within ten days after service upon it, him or them of a true copy of this decree, execute, issue and deliver to the complainant a new stock certificate for the 50 shares of the capital stock of the defendant, Lane & Lockward Company, as hereinbefore mentioned.

E. R. WALKER, C.

40 Respectfully advised,  
 JOHN E. FOSTER,  
 V. C.

*Notice of Appeal.*

**Notice of Appeal.**

Filed October 9, 1917.

IN CHANCERY OF NEW JERSEY.

*Between*

ROBERT C. LOCKWARD,  
*Complainant,*

*and*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants.*

*On Bill, etc.*

*Notice of Ap-  
peal.*

10

The defendant, Isaac L. Evans, hereby appeals from the whole and every part of the final decree made in this court in the above cause, to the Court of Errors and Appeals in the last resort in all causes.

20

CHURCH & HARRISON,  
*Solicitors of Defendant.*

Dated, October 1, 1917.

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

30

J. H. HARRISON,  
*Of Counsel with Defendants.*

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*Notice of Appeal.*

Take notice that we have this day deposited with the Clerk in Chancery, one hundred dollars (\$100.00), costs of appeal, according to the rules of the Court of Errors and Appeals.

CHURCH & HARRISON,  
*Solicitors and Counsel with Defendants.*

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Dated October 1, 1917.

Service of a true copy of the within notice is hereby acknowledged this 6th day of October, 1917.

RAYMOND, MOUNTAIN VAN BLARCOM  
& MARSH,  
*Solicitors of Complainant.*

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*Petition of Appeal.*

**Petition of Appeal.**

Filed Oct. 8, 1917.

**New Jersey Court of Errors and Appeals**

*Between*

ROBERT C. LOCKWARD,  
*Complainant-Respondent,*

*and*

ISAAC L. EVANS and LANE &  
LOCKWARD COMPANY,  
*Defendants-Appellants.*

*On Bill, etc.*

*Petition of  
Appeal.*

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

20

The petition of Isaac L. Evans, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the fourteenth day of September, nineteen hundred and seventeen, wherein Robert C. Lockward was complainant and Isaac L. Evans and Lane & Lockward Company were defendants and John C. Moore, was a "third party" under the statute, in the following respects, to wit: That the said decree ad-  
judges

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"that upon the surrender to the said Lane & Lockward Company of certificate No. 11 for 50 shares of capital stock of the Lane & Lockward Company standing in the name of

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*Petition of Appeal.*

10 John C. Moore, and assigned by said John C. Moore to the complainant, said Lane & Lockward Company and Isaac L. Evans, the President and Treasurer thereof, or such other proper officer or officers, execute under the corporate seal of said company and deliver simultaneously to the complainant in the place and stead of the said stock certificate for 50 shares, a new stock certificate in the name of the complainant for 50 shares of the capital stock of the said defendant company;" and

"that the counter-claim of the defendant, Isaac L. Evans, against the complainant and John C. Moore, he dismissed;" and

20 "that the said Lane & Lockward Company and the said Isaac L. Evans, or the other proper officer or officers of the said company, shall, within ten days after service upon it, him, or them, of a true copy of this decree, execute, issue and deliver to the complainant, a new stock certificate for 50 shares of the capital stock of the defendant, Lane & Lockward Company, as hereinbefore mentioned."

30 And your petitioner humbly appeals from the whole and every part of said decree of the Chancellor, which decrees as aforesaid, upon the grounds that the said decree is erroneous for that, the said Chancellor should have decreed in favor of the defendant, Isaac L. Evans, as against the complainant, and as against the said John C. Moore, as prayed for in the answer and counter-claim heretofore filed in the Court of Chancery, and it should have been adjudged,

40 "that said pretended sale by the said John C. Moore to the complainant of said 50

*Petition of Appeal.*

shares of stock be set aside and declared null and void;" and

"that upon the payment by defendant, Isaac L. Evans, to said John C. Moore or complainant of the sum of ten thousand dollars (\$10,000), the complainant or the said John C. Moore be decreed to execute and deliver to defendant, Isaac L. Evans, a proper transfer of said 50 shares of stock now held by them or either of them."

10

Your petitioner therefore prays that the said decree of the said Chancellor may be in whole and every part, aforesaid, reversed, set aside, and for nothing holden. And that your petitioner may have such further and other relief in the premises as to this Honorable Court shall seem meet.

20

Dated, October 1, 1917.

CHURCH & HARRISON, \_\_\_\_\_

*Solicitors and of Counsel  
with Defendant-Appellant.*

J. H. HARRISON,  
*Of Counsel with Defendant-Appellant.*

Service of a true copy of the within petition of appeal is hereby acknowledged this 6th day of October, nineteen hundred and seventeen.

30

RAYMOND, MOUNTAIN,  
VAN BLARCOM & MARSH,  
*Solicitors of Complainant-Respondent.*

40

*Answer to Petition of Appeal.*

**Answer to Petition of Appeal.**

Filed Oct. 22, 1917.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

*Between*

ROBERT C. LOCKWARD,  
*Complainant-Respondent,*

*and*

JOHN C. MOORE,  
*Defendant-Respondent,*

*and*

ISAAC L. EVANS,  
*Defendant-Appellant.*

*On Appeal.*

*Answer.*

20

The answer of Robert C. Lockward, the above named respondent, and John C. Moore, a third party defendant below under the statute, respondent herein, to the petition of appeal of Isaac L. Evans, appellant.

30

Respondents, not admitting any or all of the matters which in said petition of appeal are contained to be true, in answer thereto, nevertheless, says and admits, that a decree was entered in this cause in the Court of Chancery on the 14th day of September, 1917, for the purpose mentioned in said petition. As to the form and substance of said decree, these respondents pray to refer thereto when the same shall be produced.

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*Answer to Petition of Appeal.*

Respondents are advised and believe that the said decree is agreeable to equity, and pray that the same may be affirmed, with costs to be adjudged to these respondents.

RAYMOND, MOUNTAIN,  
VAN BLARCOM & MARSH, 10  
*Solicitors for and of Counsel*  
*with Respondent.*

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*Notice of Argument.*

**Notice of Argument.**

Filed Oct. 30, 1917.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

*Between*

ROBERT C. LOCKWARD,  
*Complainant-Respondent,*

*and*

ISAAC L. EVANS and LANE &  
LOCKWARD Co.,  
*Defendants-Appellants.*

*On Bill, etc.*

*Notice of  
Argument.*

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To Raymond, Mountain, Van Blarcom & Marsh,  
Esqs., solicitors and of counsel with com-  
plainant-respondent.

TAKE NOTICE of the argument of the issue  
joined in this cause, before the New Jersey Court  
of Errors and Appeals, to be held at the State  
House, in the City of Trenton, State of New  
Jersey, on the third Tuesday of November (No-  
vember 20th, 1917), next, at ten o'clock in the  
forenoon, or as soon thereafter as the said Court  
can attend to the same.

30

Yours respectfully,

CHURCH & HARRISON,  
*Solicitors and of Counsel  
with Defendants-Appellants.*

J. H. HARRISON,  
*Of Counsel with the Defendants-Appellants.*

40 Dated, October 25, 1917.

Sat below: Walker, C., Foster, V. C.

## New Jersey Court of Errors and Appeals

*Between*

ROBERT C. LOCKWARD,  
*Complainant-Respondent,*

and

JOHN C. MOORE,  
*Defendant-Respondent,*

and

ISAAC L. EVANS, *et als.*,  
*Defendants-Appellants.*

*On Bill, &c.*

*On Appeal  
from  
Chancery.*

**Brief for Defendant, Isaac L. Evans.**

### **Statement.**

This case was heard before Vice-Chancellor Foster. His opinion is found on page 118 of the printed book and sets forth most of the pertinent facts of the case; and, in view of the detailed statement of facts by the Vice-Chancellor, it is unnecessary to set them forth again in detail, except in the respects where the Vice-Chancellor has reached conclusions of fact which are not warranted by the evidence.

The Vice-Chancellor finds (p. 120, l. 29), that the so-called "side agreement" (Ex. D. 14, p. 115), between Evans and one Tansey, was dated December 8, 1915, but that it does not appear when Lockward and Moore learned of it. The case (p. 82, l. 28), shows that Lockward and Moore knew of this agreement about two months after its date. The Vice-Chancellor also finds (p. 120, l. 40), that Lockward acknowledged to Evans that his (Lockward's) offer of November 1, 1915, was fictitious. There is no proof to show

that Evans knew that the Lockward offer was bogus until it was developed at the hearing.

The Vice-Chancellor further finds (p. 122, l. 20), that since 1913 Evans and Lockward both sought to gain stock control of the corporation. The proof shows that Evans made no effort to this end; and, as will appear later, Evans' purpose in securing the agreement of June 14, 1913 (Ex. D. 6, p. 108), was to protect the corporation and his stock holdings therein. The testimony conclusively shows that he made no effort to gain stock control. The agreement of June 14, 1913, accomplished its purpose, and the business continued successful. Lockward knew of the agreement shortly after it was made and never objected to it (p. 60, l. 15). Lockward does not urge this agreement as justification for his effort to get Moore's stock. Lockward and Moore began their negotiations November 1, 1915. The "side agreement" between Evans and Tansey (Ex. D. 14, p. 115), was dated December 8, 1915, and Lockward did not know of its existence until two months after (p. 82, l. 27). The "side agreement" therefore, could not have been the reason for the Lockward-Moore negotiations, and Lockward's attempt to justify his acts on this ground are abortive.

### **Issues.**

Complainant seeks to compel the transfer of 50 shares of the capital stock of the Lane-Lockward Corporation which he claims to have purchased from defendant, Moore. Complainant also seeks the issue by the defendant corporation to him of a new certificate. Defendant Evans denies complainant's right to the relief sought; and in his counterclaim prays that the pretended sale by Moore to complainant of the 50 shares

of stock be set aside, that upon the payment by Evans to Moore or complainant of \$10,000, the 50 shares of stock now held by them or either of them be transferred to him (Evans). The counterclaim also contains a prayer for general relief, under which Evans seeks specific performance of a so-called "gentleman's agreement."

The issues are: First. The right of Moore to sell to complainant the 50 shares of capital stock referred to, and complainant's right, under the proofs, to have the certificate transferred to him; and, second, the right of defendant Evans to have Lockward declared to hold the Moore stock in trust for Evans and to have the stock transferred to him.

The Chancellor decreed, in effect, that the 50 shares of stock held by Moore had been conveyed to Lockward and that the officers of the defendant corporation issue a new certificate to Lockward for this stock. Evans appeals from every part of the final decree.

The stock holdings of Lockward and Evans are such that the one who acquires the Moore stock will secure the stock control of the corporation.

### Argument.

#### POINT I.

**The Moore-Evans agreement of June 14, 1913 (Ex. D. 6, p. 108), is valid and enforceable against Lockward.**

So far as it is material, the agreement of June 14, 1913, between Moore and Evans, provided for a "first privilege" on the part of Evans to purchase the 50 shares of stock held by Moore, and a mutual right on the part of Moore to acquire

from Evans 50 shares of his stock. Moore agreed

“— that I will not at any time transfer or assign my said shares to any person or persons or corporation, until after I have first *in writing* offered them for sale to the said Issac L. Evans at the same price which outside parties may *in writing* have offered for the same.”

Evans stipulated that he would reserve for Moore 50 shares of his stock

“until after I have first *in writing* offered them for sale to the said John C. Moore, at the same price which outside parties may *in writing* have offered for the same.”

That part of the agreement of June 14, 1913, which related to the voting by Moore of his stock as Evans might direct, has no bearing in the determination of this issue. The pertinent part of this agreement relates to the reciprocal right on the part of Evans and Moore to acquire 50 shares of stock of the other, upon the receipt by the one intending to sell of an offer in writing for the stock by outside parties. A contract between stockholders that one shall first offer his stock to another stockholder before disposing of it has been generally approved by the courts and text writers, and citation of cases is not necessary.

It will be noted that the language used in granting this reciprocal right to Moore and Evans is identical. The meaning is plain; and, as will appear later, each of the parties to the agreement construed it to mean that the other had the right to inspect any offer in writing which might be received. The Vice-Chancellor, in his opinion, gives a strained construction to the agreement and endeavors to show the ex-

pression "outside parties" does not include Lockward, and that, therefore, Evans is not entitled to its protection under the facts. The language used may be inapt. It is insisted in behalf of Evans that the term "outside parties" is synonymous with the term "other parties," that is parties other than Moore and Evans, the parties to the agreement. The term could not mean "parties outside of the company," as suggested by the Vice-Chancellor. There would have been no purpose in Moore and Evans making this agreement unless they were both protected against stockholders as well as non-stockholders.

But assuming that the Vice-Chancellor's construction (p. 123, l. 15, *et seq.*) is correct that Lockward was not one of the "outside parties" referred to in the agreement, it is insisted that, even under such a construction, the agreement was violated because having the offer from Lockward and Lockward not being an "outside party," Moore could not transfer his stock. Under such a construction, the agreement can only mean that Moore could not transfer his stock to any "person or persons or corporation" until he had received an offer from "outside parties" and until he had offered the stock to Evans.

Evans states that before Lockward left for his vacation in 1913, he, Lockward, had made an effort to force his brother-in-law in the Company, and later had neglected his own work (p. 60, l. 18). This situation portended trouble, and Evans and Moore, for the proper security of the business, and protecting it against Lockward, entered into the agreement of June 14, 1913. The brother-in-law proposition was again brought up by Lockward upon his return from his vacation; and it was at this time that Evans informed Lockward of the making of the agreement. Moore, at this time, evidently thought as Evans

did. Both appreciated the seriousness of the situation and realized the necessity of protecting the company against nepotism. The only effect upon Lockward of the making of the Moore-Evans agreement was, to use his own words, that it made him "a little bit sore, naturally" (p. 86, l. 8). It appears conclusively, however, that the business of the company was conducted most successfully, with average annual dividends of fifteen per cent., and annual earnings approximately twenty-two or twenty-three per cent. Lockward, himself, testifies, in effect, that there had been no serious difficulties between Evans and him, and that the business had been conducted by Evans with every degree of success (pp. 85-86).

The interpretation put upon this agreement by all of the parties concerned clearly shows that Lockward was included within the term "outside parties." Moore so interpreted it or he would not have submitted to Evans the Lockward offer of November 1, 1915 (Ex. D. 2, p. 104), and the offer referred to in his letter to Evans of November 29, 1915 (Ex. D. 11, p. 113). In Ex. D. 9, p. 112, Moore uses the following language: "And as further evidence of my desire to carry out the terms and intent of the agreement above mentioned, I again offer you my fifty shares of stock \* \* \* at the same price per share as I could secure from '*other parties.*'" Lockward interpreted the term "outside parties" in the same way. This clearly appears from his testimony (p. 83, l. 18):

"Q Why did you think it necessary to suppress the fact that you had made the offer of \$10,000? A I didn't think it was necessary.

Q Why not? A Because I knew that Mr. Evans was bound to find it out, or

would know it, on account of the agreement that they had between Mr. Moore. I didn't think it was up to me to say anything to Mr. Evans. Mr. Moore and Mr. Evans had an agreement together.

Q You knew of that agreement? A Yes.

Q You thought that under the terms of that agreement it would be necessary for Moore to notify Evans that he had such an offer? A Bound to."

Evans bases his right to relief upon this meaning of the term. In his letters to Moore, Evans calls Moore's attention to the terms of the agreement in question and claims the right "to inspect your alleged offer, before giving you my decision as to the purchase by me of this stock." He relied throughout upon his rights under the agreement, and there is no evidence which shows or even tends to show that he excluded Lockward from the operation of the agreement. If, in fact, there is any ambiguity in the meaning of the term "outside parties," the construction by the parties should control.

The Vice-Chancellor goes far afield when he says that the term "outside parties" may have been employed to satisfy Moore who was under some obligations to the Lockward family. There is no evidence to show the existence of any such obligation.

If, as suggested by the Vice-Chancellor, Moore may have been obligated to the Lockward family why was the same expression used in the paragraph of the agreement obligating Evans to give Moore the privilege of purchasing at the same price which outside parties may, in writing, have offered for the Evans' stock? Evans was cer-

tainly under no obligation to the Lockward family, and there is no evidence to show that Moore was.

## POINT II.

### **Moore failed to comply with the terms of the Moore-Evans agreement of June 14, 1913 (Ex. D. 6, p. 108).**

(a) *Lockward's offer or offers of November 1, 1915, were withdrawn November 2, 1915.*

On November 1, 1915, Moore delivered to Evans the letter (Ex. D. 2, p. 104), in which he notified Evans of the receipt of an offer of \$50,000 for his stock. It is significant that the name of the person making the offer was not disclosed. All that appears is the word "signed" at the bottom of the copy of the alleged offer. The case shows that Evans immediately got in touch with Lockward, and later consulted his attorney and with him, on November 2, 1915, the day following the receipt of the offer, had a lengthy conference with Lockward. At this conference, the attorney said, in effect, that he deprecated the existence of differences between Lockward and Evans; and, assuming the offer to have been bona fide, expressed his regret that Moore should get such a large sum of money for his stock, the offer of \$50,000 being about five times the book value of the stock. The plan was suggested of making an equal division of the stock of the company between Evans and Lockward, and the placing of qualifying shares in the hands of a dummy. This was the agreement arrived at between Lockward and Evans; and, upon the suggestion that a written memorandum be made concerning this agreement, either one or other of the parties said that it was

a "gentleman's agreement" and that it was unnecessary to put it in writing (pp. 78-81). As a result of and during this conference, Lockward signed a withdrawal of his offer of November 1, 1915 (Ex. D. 1, p. 103).

Nothing was said at this conference regarding the other alleged offer of \$10,000 (Ex. C. 2, p. 102). It was not until the trial that Evans knew of its existence. Lockward (p. 25, l. 31) and Moore (p. 87, l. 36) both admit that the \$50,000 offer was a bogus offer, and that its purpose was to deceive Evans; that the arrangement between Moore and Lockward was that, in the event of the offer not being accepted by Evans, Lockward would receive a credit of \$40,000, thereby making the net cost of the stock to him \$10,000. Both the \$50,000 and the \$10,000 offer were prepared on the same day (p. 25, l. 14 *et seq.*). It is respectfully urged that, in effect, these two offers were one and the same, and that the withdrawal by Lockward on November 2 of "the offer" of November 1, constituted the withdrawal by him of all offers. If the \$50,000 offer was another form of the \$10,000 offer, then it was withdrawn by Ex. C. 2. If the \$50,000 offer was a separate offer, it was admittedly a "fake," and therefore did not exist.

Lockward testifies that one Brandley prepared the alleged \$50,000 offer and "got it up himself" (p. 26, l. 11). This tends to confirm the contention of Evans that the \$50,000 offer was merely another form of the \$10,000 offer, and that the purpose of Lockward and Moore in transmitting the alleged \$50,000 offer to Evans was for the purpose of deceiving Evans and of setting a figure which Evans, under the circumstances, could not consider. The \$50,000 offer

(Ex. D. 2, p. 104) was unsigned. Lockward and Moore give uncertain testimony concerning the destruction of a copy of this offer, and the question arises: was it an offer? Surely the agreement of June 14, 1913, did not contemplate an unsigned offer, which meant no more than a verbal offer. Under the circumstances, therefore, this offer had no validity and was unenforceable. When Moore wrote Evans on November 29, 1915 (Ex. D. 11, pp. 113-114) that he had an offer of \$10,000 he misstated the facts. The testimony shows that Moore referred, in this letter, to the Lockward \$10,000 offer, but, as we have previously shown, this offer had been withdrawn by Lockward on November 2, 1915. The offer having been withdrawn, all subsequent negotiations were informal and outside of and in violation of the Moore-Evans agreement of June 14, 1913.

Lockward testifies (p. 36, l. 14) that, at the time of his giving the option to Tansey, December 8, 1915, he (Lockward) did not have an option to purchase Moore's stock from him. Lockward also testifies (p. 82, l. 7) that Moore had not then (December 8, 1915) accepted his offer and that if he (Lockward) sold out to Tansey, he did not want Moore's stock. Lockward told Evans that the \$10,000 offer of which Evans had been notified by Moore had not come from him (Lockward) (p. 52, l. 25, and p. 67, l. 18). This all tends to show the non-existence at that time of Lockward's offer.

Moore (p. 90, l. 28) testifies that he regarded the option which he obtained from Tansey for the Mutual Company as a substitute for Lockward's offer, and that Lockward was only obligated to stand by his alleged offer and protect Moore if the joint option (Ex. D. 3, p. 105) given by Lockward and Evans to Tansey, was

taken up. Moore also testified (p. 94, l. 35) that he and Lockward agreed that Moore should get an option from Tansey, and that if he did not obtain such an option, Lockward would take care of him on the \$10,000 offer. Moore further testifies on cross examination (p. 95, l. 1):

“Q So with his consent to agree you would try first to sell your stock to the Mutual? A Yes.

Q And the understanding between you and Lockward was that if you could sell it to the Mutual you were to do so? A Yes.

Q But if you didn't sell it to the Mutual, the offer was to sell him? A. Yes, sir, that was it.”

The case shows that Moore on December 8, 1915, gave an option to Tansey covering Moore's 50 shares of stock (p. 96, l. 30) (see also Ex. D. 15, p. 116). There is no testimony showing that Lockward renewed to Moore his \$10,000 offer of November 1, 1915. Moore testifies (p. 89, l. 10) that when Lockward gave him the withdrawal “it was all off.” This shows that all the negotiations between Lockward and Moore were concluded so far as Lockward's offer was concerned.

Lockward and Evans both testify to several conversations between them, after Moore's notice to Evans of the alleged \$10,000 offer. Lockward does not deny that Evans familiarized him in detail with the progress of their joint negotiations for the sale of their stock to Tansey; and, as a result thereof, Lockward and Evans, on December 8, 1915, signed a joint option (Ex. D. 3). Lockward was frank to Evans and his counsel about the making of the \$50,000 offer for Moore's stock, but he did not inform Evans that the offer was fictitious. Evans,

until the day of the hearing, had every reason to believe, and did believe, that Lockward's offer of \$50,000 was genuine and not a part of an ill-conceived and poorly matured plan between Lockward and Moore to defraud Evans. Is it not reasonable to suppose that if he, Lockward, had considered the alleged \$10,000 offer to be in existence, he would have told Evans about it? If the \$10,000 Lockward offer was still in existence and bona fide, why did not Moore immediately accept the Lockward offer? Lockward was entirely responsible according to Moore and could pay him immediately for the stock, whereas the Mutual Company, represented by Tansey, was a get-rich-quick concern of uncertain antecedents and very doubtful future. This state of facts is strongly corroborative of defendant's contention that Lockward's offer had been withdrawn, and that Moore so regarded it. If the offer was still open, Moore would certainly have accepted it. He would not have made frantic efforts to get in touch with the Mutual Company, and be satisfied with an option to a concern without credit as a substitute for an offer from Lockward, who was financially able to make good.

(b) *Moore did not submit to Evans the alleged Lockward offer, and denied Evans his right of inspection thereof under agreement of June 14, 1913.*

We believe we have conclusively shown that the \$10,000 Lockward offer was withdrawn, but even on the violent assumption that such was not the fact, we submit that Moore never complied with the agreement of June 14, 1913. Moore attempted to comply with the terms of the agreement of June 14, 1913, by submitting

to Evans, under date of November 25, 1915, a letter (Ex. D. 9, p. 112) in which he "offers to sell to Evans" fifty shares of stock of the Lane and Lockward Company. Nothing is said in this letter about the receipt of an offer from others for this stock. Exhibit D. 9 is, therefore, an effort by Moore to sell his stock to Evans, as distinguished from a notification to Evans that he, Moore, had received an offer from other parties. If Moore, at this time, regarded the \$10,000 Lockward offer of November 1, 1915, still in existence, why did he not refer to it? Was it not Moore's purpose in writing this letter to Evans, to put himself in position to dispose of his fifty shares of stock to the Mutual Company, which had opened negotiations for the acquisition of the Lane and Lockward Company about November 15, 1915, and subsequent to the \$50,000 offer? Evans wrote to Moore on November 27, 1915 (Ex. D. 10, p. 113), that he, Moore, was not complying with the terms of the agreement of June 14, 1913. Moore replied by letter under date of November 29, 1915 (Ex. D. 11, p. 113), and "offers to sell" to Evans the fifty shares of stock in question for \$10,000 and advises Evans of the receipt of an offer in writing for these shares at this price. He did not disclose the identity of the person making the offer. Why did he not do so? He then knew the Lockward offer was dead, and he had no other offer. He wished to put himself in position to deal with the Mutual Company.

Evans wrote to Moore under date of December 2, 1915 (Ex. D. 12, p. 114), "*I claim the right to inspect your alleged offer before giving you my decision as to the purchase by me of this stock.*" He also referred in this letter to the offer of \$50,000 for the same stock.

What other attitude could Evans take? The whole transaction smacked of fraud, and Evans had taken the precaution, upon receipt of Moore's letter of November 29, 1915, to take it up with Lockward; and Lockward denied that the alleged \$10,000 offer was his (p. 52, l. 17 *et seq*). Lockward explained it by saying that he thought Moore was trying to get a release from his agreement with Evans so he could give an option to the Mutual Company. Lockward does not deny that Evans took up with him the \$10,000 offer. Moore testified in effect that he carried around with him for a period of four months the alleged Lockward offer, waiting for Evans to ask him for the opportunity of inspecting it. Suppose Evans had made such a request, Moore was tied hand and foot by the option which he gave to the Mutual Company for a period of four months after December 8, 1915 (p. 90, l. 14). He could not then have sold his stock to Evans, because he would thereby have violated the exclusive option which he had given to the Mutual Company. Moore is not honest in his statement or in his attitude. He could not have made good under his agreement with Evans; and, in fact, he only gave Evans the time between receipt of Evans' letter of December 2, 1915, and December 8, 1915, to avail himself of the opportunity to purchase the stock. Evans did not have the opportunity during these few days to see Moore, because he was a salesman on the road and came to the factory only on Saturday or Sunday (p. 91, l. 33 *et seq*). There is no proof that Evans saw Moore during this period.

When Evans notified Moore on November 22, 1915 (Ex. D. 7, p. 110), that he had been asked to execute an option and that it was "subject to your inspection which will make known to

you the price offered per share," Moore replied that he was in no position to buy the stock and therefore did not care to inspect it. Nevertheless, Moore had the opportunity offered to him to make such inspection. Why was it not incumbent upon Moore to reply to Evans' letter of December 2, 1915, and give Evans the same right of inspection that he, Moore, had received from Evans? Moore admits the reciprocal right of inspection (p. 93, l. 22). Moore's only excuse for not showing the offer to Evans is that the parties concerned were "not on speaking terms" (p. 93, l. 10).

The proposed option (Ex. D. 13, p. 115) which was the option mentioned in Evans' letter to Moore of November 22, 1915, contained the name of the prospective purchaser, the terms of sale, conditions, etc. Evans' letter, and Moore's reply (Ex. D. 8, p. 111) certainly warrant the conclusion that both parties, at the time, understood that any offer was to be made in writing, and that the party receiving the offer should submit it for inspection to the other party, so that he might be informed of the terms and conditions of the offer, and see that it had been made in good faith. What other purpose could have been served by the use of the words "in writing" in the Moore-Evans agreement, if it were not for the purpose of giving the right of inspection of offers received in writing? It was largely a question of good faith, and the necessity for the inspection of the offer to test its genuineness was clearly disclosed by the bogus \$50,000 offer and the attempts on the part of Moore and Lockward to deceive Evans.

(c) *The consideration of the alleged sale was \$9,250; and no offer at this figure was ever made.*

The proofs further tend to show that the actual sale price was not \$10,000 but \$9,250 (p. 30, l. 18 *et seq*; Ex. C. 3, p. 102). A dividend of fifteen per cent. on the stock of the defendant corporation was declared April 6, 1916. This was four days before the alleged sale of the Moore stock to Lockward. Moore was therefore entitled to the dividend of \$750 and received a check for the same from the company. The net result of the credit of this amount on Lockward's note is to make the sale price of the stock \$9,250. No offer in writing was made at this price and no opportunity was given by Moore to Evans to purchase the stock at this price. This is a clear violation of the agreement of June 14, 1913.

### POINT III.

**The so-called "side agreement" (Ex. D. 14, p. 115) between Tansey and Evans has no bearing upon the issues of this case.**

It is undisputed that on November 2, 1915, Evans and Lockward had a lengthy conference concerning the \$50,000 offer of November 1, 1915. At this conference, counsel for the defendant was present as a mediator and not as an attorney. At that time a so-called "gentleman's agreement" was entered into, under which Lockward and Evans agreed not to buy the Moore stock and under which the stock was to be acquired at a reasonable figure and divided in such manner that the stock ownership of Evans and Lockward would be equal, qualifying shares being placed in the name of a

dummy (pp. 53, 65, 75, 78, 80-81). This agreement was scrupulously carried out by Evans. It was discussed between him and Lockward on a number of occasions. The suggestion was made that this agreement be put in writing but it was stated that it was not necessary to put such an agreement in writing and that both parties would live up to it. Lockward intended and we believe did honestly seek to perform the "gentleman's agreement" until Tansey appeared on the scene some time in January or February, 1916, when Lockward was informed of the so-called "side-agreement" between Tansey and Evans.

Lockward (p. 33, l. 6) offers the "side-agreement" (Ex. D. 14) as an excuse for violating the "gentleman's agreement." Evans frankly admits the existence of the "side-agreement" which bears date December 8, 1915. It has no bearing upon the issues between the parties. Evans was the practical, efficient man of the defendant corporation. Lockward had played with his job. His connection with the corporation was largely sentimental. Evans, to Lockward's knowledge, had been elected a vice-president and director of the Mutual Company. There is no testimony to show that Lockward had or desired to have any connection with the Mutual Company. His sole interest was to dispose of his holding in defendant corporation at a good figure. The arrangements which Evans might make with the Mutual Company for services to be performed for it, did not concern Lockward. Evans was entitled to make the best possible arrangements with the Mutual Company, either in the way of salary or other compensation for associating himself with the company. Under the agreement referred to, Evans was to receive 5,000 shares of stock of the Mutual Company

and in consideration thereof "to identify himself with said Mutual Tobacco Company, Inc., and perform such services for said company as the Directors thereof shall determine and require and at a salary to be mutually agreed upon." His getting the stock was contingent upon his becoming an employee of the company and contingent upon an agreement as to the character of services to be performed and the salary to be paid to him. The agreement had nothing to do with the sale of the defendant company's stock to Tansey. It related entirely to the future activities of the Mutual Company; and it is respectfully submitted that there is no ground for Lockward's allegation of bad faith on Evans' part in this connection. Evans testified that this "side-agreement" had been arranged for prior to the giving of the joint option by Lockward and him on December 8, 1915. The fact that Evans negotiated for, and obtained for Lockward an option for sale of Lockward's stock, a figure \$12,291.56 over the amount which Lockward had expected, is evidence which should convince the Court that Evans was playing in good faith with Lockward. Lockward was to receive under this option (Ex. D. 3, p. 105) the same consideration for his stock that Evans was to receive for his stock. The sale of the defendant company's stock and the contract between Evans and the Mutual Company for Evans' services were independent transactions. Probably Tansey did not wish Lockward or any one else to know the cost of Evans' possible connection with the Mutual Company. Under no circumstances would Lockward have been entitled to any part of Evans' salary as an officer of the Mutual Company, and under no circumstances would he have been entitled, either in law or morals, to any part of the con-

sideration which Evans might receive in the way of stock. It is urged that Evans' conduct in securing the "side-agreement" with Tansey was not in any way inequitable. The "side-agreement" had nothing to do with the violation by Moore and Lockward of the agreement of June 14, 1913.

#### POINT IV.

**The "gentleman's agreement" between Lockward and Evans of November 2, 1915, is valid and enforceable; and, under the prayer for general relief in the counterclaim, Evans is entitled to the specific performance of said agreement.**

Under Point III. we have referred in some detail to the so-called "gentleman's agreement" between Lockward and Evans under which the Moore stock was to be acquired from him and divided between Lockward and Evans in such manner that their respective stock ownerships would be equal. The case shows (pp. 48, 49, 53, 65, 75, 78, 80-81) that the parties agreed that, after the taking over of the Moore stock, the joint holdings of Lockward and his wife were to be the same as the holdings of Evans, qualifying shares to be assigned to a dummy or all of the stock to be placed in the hands of a trustee. If the Court finds that the transfer by Moore of his stock to Lockward is valid, then Lockward under the "gentleman's agreement" becomes a trustee *ex maleficio* for Evans and as such should account to Evans, for such portion of the Moore stock as will equalize the Lockward and Evans holdings. Evans performed the "gentleman's agreement" on his part and trusted Lockward to do the same thing. The stock in question is not procurable in the

open market and it has no market value as such. Its ownership carries with it the control of the corporation, and under such circumstances the Court should require Lockward to specifically perform the "gentleman's agreement" and compel Lockward to transfer to Evans his portion of the Moore stock. Unless the alleged sale from Moore to Lockward is set aside or unless Lockward be compelled to specifically perform the "gentleman's agreement," Evans will suffer irreparable injury, and an action at law to recover damages for breach of contract will not afford adequate relief.

See cases cited under Point V.

#### POINT V.

**Lockward had notice of Evans' rights in the premises and should be compelled in equity to transfer the Moore stock to Evans upon the restoration of the parties to their original status.**

The only question on this phase of the case is whether Lockward is a bona fide purchaser of the Moore stock and took it without notice of Evans' equity. Lockward admits knowledge of the Moore-Evans agreement (p. 83, l. 21), and seeks to sustain his title to the shares because of Moore's alleged compliance with the terms of the agreement in first offering his stock to Evans. We submit that it has been conclusively shown that Moore did not comply with the terms of this agreement, had withdrawn his offer of November 1, 1915, and sold his stock to Lockward without giving Evans an opportunity to test the genuineness of his alleged offer by an inspection thereof. We have shown that Moore disposed of his stock for the

sum of \$9,250, without notifying Evans of the receipt of such an offer. How can the sale to Lockward be sustained when Evans seeks specific performance of his agreement to purchase the Moore stock and tenders himself ready to perform?

Lockward's title to the stock can only be sustained upon proof that he is a bona fide purchaser for value and without notice of Evans' rights. Evans asks specific performance. If the Lockward offer of \$10,000 was bona fide, Evans may now avail himself of his rights under the agreement of June 14, 1913. Evans did not learn of the alleged Lockward \$10,000 offer until the day of the hearing. His immediate tender to take up the stock should be accepted by Moore, and the court should now compel Moore to accept it. Lockward acquired the stock with notice of Evans' prior equity, and Evans is entitled to be placed in Lockward's position. The Moore stock should be transferred to Evans upon payment by him of the sum of \$10,000 with such interest as the Court may deem to be equitable under all circumstances of the case.

Vice-Chancellor Foster suggests that Evans has an adequate remedy at law against Moore. The case does not warrant such a conclusion. The Moore stock will give control of the defendant corporation to Evans or Lockward. It is of "peculiar value" and damages will not suffice. The complainant below relied upon the case of *Farrell v. Co.*, 12 Buch (82 Eq) 97, in limiting Evans to an action at law. The facts in the Farrell case are not in any way analogous to the case at bar. In the Farrell case the dispute was between the claimant of the legal title and the company issuing the bond. The bond of the Passaic Water Company was,

as the opinion sets out, "a sealed bond," and, therefore, under the statute referred to in the opinion, the aid of equity was unnecessary. In the Farrell case, the court also found that a gift of the bond in question had actually been made. In the Farrell case there was no question, and could have been no question, about the control of a close corporation, neither did the ownership of the bond of the defendant company have any bearing upon the control of the company, as the ownership of the Moore certificate has in the case at bar. It is plain to be seen, that damages cannot furnish an adequate remedy to Evans; and, as will be shown later, the law is clear that in cases like the one now before the court, equity has jurisdiction and can and should give relief.

The proofs clearly show Lockward's knowledge of the agreement of June 14, 1913 (Ex. D. 6, p. 108), and his knowledge of Moore's attempt to comply with the agreement. He knew that Evans' rights under the agreement had been violated, or he would not have given his option to the Mutual Company covering the Moore stock, "subject to the transfer of the stock—subject to a suit" (p. 84, l. 33). Lockward took the stock knowing of Evans' rights; and Lockward has become a constructive trustee for Evans. It is unnecessary to cite authority for the elementary proposition that a purchaser with notice of a prior equity, superior to the rights of his assignor, takes the place of the assignor, and is bound to do what his assignor was bound in equity to do. It is respectfully urged that the same rule in regard to constructive trusts of real estate will apply to constructive trusts of personal property of this

kind, and is particularly applicable to the case at bar.

*Kimball v. Morton*, 1 Hal., p. 26.

*Safford v. Barber*, 4 Buch. 352 at p. 362.

*Lewin on Trusts*, Vol. 111 (From the 8th Eng. Ed.), p. 1052.

*Sherman v. Herr* (Pa.) 69 At. R. 899.

36 *Cyc.*, pp. 761 and 762 and cases cited.

The Lane & Lockward Company is a close corporation. With the exception of the Moore stock, all of its stock is owned by the Lockwards and Evans. It does not appear that the stock has any market value as such. The English rule appears to be very liberal in the matter of granting relief where shares of stock are involved. Chancellor Walker, sitting as Vice-Chancellor, in *Safford v. Barber*, 4 Buch 352, follows the English rule; and, after analysis of a large number of cases, cites with approval (page 357) 26 Am. & Eng. Enc. L. (2 Ed.) 122.

“Where the corporate stock to which the contract relates is not procurable in the market, and its pecuniary value is not readily ascertainable, specific performance will, as a rule, be decreed, especially where the court acquires jurisdiction of the action on the ground that it is an action to enforce a trust.”

See also 36 *Cyc.*, p. 560 (cases cited).

Immediately following the above is given the following additional reason for specific performance:

“Where the stock with reference to which the contract is made is of peculiar value to the plaintiff in order that he may obtain a proper and legitimate control over the man-

agement of a private corporation, specific performance will, as a rule, be decreed.”

See also *36 Cyc.*, page 562 (cases cited).

*Patterson v. Skillman*, 7 Stew. (34 Eq) 347.

*Patterson v. Skillman*, 17 Stew. (43 Eq) 392.

*Schraft v. Wolters*, 16 Dick. (61 Eq) 467 at page 469.

*Motley v. Darling*, 98 Atl. Rep. 384.

The extent to which the courts of New Jersey have gone in granting specific performance is illustrated in the case of *Curtice Brothers Company v. Catts*, 2 Buch. (76 Eq) 831, where relief was decreed against the grower of tomatoes who refused to sell as agreed, where the purchaser was left dependent upon the supply which might be obtained from an uncertain market. There seems to be no good reason against the exercise of such power by this court where, as in the case at bar, damages will not furnish a complete and satisfactory remedy.

See also

*Treasurer v. The Commercial Coal Mining Co.*, 23 Cal. 391.

*Cheale v. Kenward*, 3 DeG & J. 29—44 Eng. Rep. 1179.

*Paine v. Hutchinson*, L. R. 3 Ch. App. 388.

*Johnson v. Brooks*, 93 N. Y. Rep. 337 at p. 343.

*Goodwin Stove & Meter Co.'s appeal*, 117 Pa. St. Rep. 514.

It is respectfully submitted that the status can be restored by the payment to Moore of \$10,000 with interest, and the payment by Moore to Lockward of such sums as he may have received from Lockward. This court has all the parties before it, and has jurisdiction to en-

force specifically the contract for the sale of this corporate stock which has peculiar value to Evans who seeks performance of his contract with Moore. Evans comes into court with clean hands and tenders funds sufficient to restore the status of Moore and Lockward. The decree of the Chancellor should be revised and the relief sought by Evans in his counterclaim should be granted and Lockward decreed to deliver the Moore stock to Evans, or Lockward should be decreed to equalize his stockholdings with Evans.

Respectfully submitted,

CHURCH & HARRISON,  
*Solicitors and of Counsel*  
*with Defendant-Appellant.*



## New Jersey Court of Errors and Appeals

*Between*

ROBERT C. LOCKWARD,  
*Complainant-Respondent,*

*and*

JOHN C. MOORE,  
*Defendant-Respondent,*

*and*

ISAAC L. EVANS, *et als.*,  
*Defendants-Appellants.*

*On Bill, &c.*

*On Appeal  
from  
Chancery.*

### **Brief for Respondents.**

#### **Statement of the Case.**

This is an appeal from chancery. The case was tried before Vice-Chancellor Foster, who decided the same in favor of the complainant, in a careful and well-considered opinion. The Vice-Chancellor dealt with the case so thoroughly that it would seem that the decree should be affirmed upon his opinion.

Complainant filed his bill to compel defendants, Lane & Lockward Company, and Isaac L. Evans, its president and treasurer, to transfer 50 shares of the capital stock of said company purchased by him from John C. Moore. The relief prayed for was not resisted by Lane & Lockward Company, but Isaac L. Evans individually filed an answer and a counter claim against Mr. Lockward, the complainant below, and one John C. Moore, setting forth an agreement between Moore and him, D. 6-108, whereby Mr. Moore agreed that he would not sell said

shares of stock to any person until he had first in writing offered them for sale to Evans at the same price which other persons in writing might have offered for the same, and that Evans and Lockward mutually agreed that neither of them would make an offer for said shares of stock, nor purchase the same directly or indirectly, and that the sale of said shares from Moore to Lockward was in violation of said agreement, and through collusion between Lockward and Moore. In his counter claim, Evans charged that he tendered to Lockward \$10,000 and asked to have the shares turned over to him, which offer was refused. In the counter claim, Evans prayed that upon the payment by him to Moore or Lockward of the sum of \$10,000 that a proper transfer of the shares of the stock be made to him.

Mr. Lockward filed a replication and answer in reply admitting the existence of the agreement Ex. D. 6, but denying that the sale from Moore to him was fraudulent, and stating that Moore had complied with the terms of said agreement before the sale and purchase, and in answer to the counter claim, denied the tender of \$10,000.

Mr. Moore filed an answer to the counter claim of Mr. Evans, in which he admitted the existence of the agreement, Ex. D. 6; denied that the sale of the stock was fraudulent, alleged that he had complied with the terms of the agreement, Ex. D. 6, and denied that Mr. Evans had tendered to him the sum of \$10,000.

On the part of Mr. Lockward, it was proved that in the month of April, 1916, he purchased 50 shares of stock from Mr. Moore, made out a new certificate, and offered it to Mr. Evans for his signature, Mr. Evans then occupying

the positions of president and treasurer of the company, p. 21.

The pertinent part of the agreement between Moore and Evans, Ex. D. 6-108, is as follows:

“I, John C. Moore, for and in consideration of the sum of one dollar (and other valuable considerations) to me in hand paid by Isaac L. Evans, do hereby give to the said Isaac L. Evans the first privilege of purchasing the fifty shares of the capital stock of the Lane & Lockward Co., a corporation, doing business at Caldwell, in said County and State, now held by me and standing in my name on the books of said corporation, and I hereby agree that I will not at any time transfer or assign my said shares to any person or persons or corporation, until after I have first in writing offered them for sale to the said Isaac L. Evans at the same price which outside parties may in writing have offered for the same.”

It will be noticed that Mr. Evans under this agreement had the first privilege of purchasing Moore's shares and that Moore's agreement was not to transfer or assign the shares to any person until he had first in writing offered them for sale to Mr. Evans at the same price which outside parties might in writing have offered for them.

On November 1, Mr. Lockward, the complainant, made an offer in writing to Mr. Moore of \$10,000 for the shares, Ex. C. 2, p. 102.

On the same day Mr. Moore communicated by letter to Mr. Evans an offer of \$50,000 for the shares of the stock, Ex. D. 2, p. 104.

This last offer is the fictitious offer referred to by the Vice-Chancellor in his opinion. The

\$50,000 offer was withdrawn by Ex. D. 1, p. 103, on November 2, 1915, at a conference between Mr. Harrison, Mr. Evans and Mr. Lockward.

After the withdrawal of the \$50,000 offer which was the only offer withdrawn, as hereinafter mentioned, Mr. Moore communicated to Mr. Evans the fact that he had received an offer of \$10,000 by Ex. D. 11, p. 113. Thus clearing the way for the sale to Mr. Lockward.

The correspondence between Mr. Evans and Mr. Moore relating to the \$10,000 offer is hereinafter set forth.

The procuring of the agreement, Ex. D. 6, was the first step by Mr. Evans which made trouble between him and Mr. Lockward. In the summer of 1913, after this agreement was signed, Mr. Evans assumed an attitude of authority over the affairs of the business. At page 60, he testified that during a dispute between him and Mr. Lockward concerning the employment of Mr. Lockward's brother-in-law, he, Evans, finally said p. 61, l. 15, "I haven't been asleep this summer, you can see," referring to the fact that he had procured the agreement giving him control of the company.

The company had been engaged for a long period of years in the manufacture of tobacco at Caldwell, New Jersey. The stockholders and the number of shares held were as follows:

Mr. Evans .....	305 shares
Mr. Moore .....	50 shares
Mr. Lockward .....	290 shares
Mrs. Lockward .....	5 shares

In the fall of 1915 negotiations were pending for the disposal by Mr. Evans and Mr. Lockward of their shares to a Mr. Tansey, who was endeavoring to form a company known as the

Mutual Tobacco Company. Mr. Evans, who had agreed in Ex. D. 6 to give Mr. Moore an opportunity to buy 50 shares of his stock, to prepare the way for disposing of his shares to Mr. Tansey, on November 22, 1915, wrote to Mr. Moore, Ex. D. 7-110 that he had executed an option for the sale of his stock, that the option was in his possession to be inspected, and offered 50 shares to Mr. Moore at the same price that he intended to execute the option. Mr. Evans did not pretend to say that he had an offer in writing as required by the agreement.

Mr. Moore replied by Ex. D. 8-111 that he desired further time to think the matter over. On November 25, Mr. Moore replied Ex. D. 9-112 that he could not buy Mr. Evans' stock, and following the offer of Mr. Evans very closely, he offered his shares of stock to Mr. Evans.

Mr. Evans under date of November 27, Ex. D. 10-113, referred Mr. Moore to the agreement and stated that he, Mr. Moore, was not complying with the contract.

Mr. Moore replied under date of November 29, 1915, D. 11, pp. 113-114. The last sentence of the second paragraph of this letter is as follows: "I hereby advise you that I have received an offer in writing for these shares at a price of \$10,000, and in accordance with the terms of our agreement of June 14, 1913, I am giving you the first privilege of purchasing these shares."

Mr. Evans replied under date of December 2, 1915, Ex. D. 12, p. 114, claiming the right to inspect the alleged offer before giving his decision.

From the time of the writing of the letter, Ex. D. 12, although Mr. Evans saw Mr. Moore

at frequent intervals, he never demanded to see the offer, p. 64, l. 10 to l. 40. Mr. Evans claimed on the witness stand that it was Mr. Moore's duty to show the offer to him, but there was nothing in the contract which ever expressly or impliedly made this necessary.

On the eighth day of December, 1915, which was less than a week after Mr. Evans wrote his letter claiming a right to inspect the offer, he executed to Mr. Tansey an option, Ex. D. 3, p. 105, on all his stockholdings for a period of four months.

Mr. Evans and Mr. Lockward executed a joint option to Tansey.

Mr. Lockward testified, pp. 36, 41, 42, that he and Mr. Evans were working together in the sale of their stock to Tansey, and that he, Mr. Evans, was looking after Mr. Lockward's interest. In the face of this, Mr. Evans procured from Mr. Tansey the secret agreement referred to in the opinion of Vice-Chancellor Foster, Ex. D. 14, p. 115, part of the consideration of this secret agreement being that Mr. Evans would procure an option on Mr. Lockward's stock. By this secret agreement Mr. Evans was to receive from Mr. Tansey 5,000 shares of the new company, and to identify himself therewith.

Mr. Evans did not disclose to Mr. Lockward the existence of the secret agreement, p. 75, l. 30, and when Mr. Lockward complained to him that he, Mr. Evans, was not treating him right, Mr. Evans replied that the private arrangement between him and Tansey was Evans' own business, p. 83, l. 10.

The facts are quite fully stated by Vice-Chancellor Foster in his opinion, p. 118, and counsel for the appellants criticises the findings of

fact in his statement of the case. It is stated that the Vice-Chancellor incorrectly found that Mr. Evans had knowledge that the \$50,000 offer was fictitious. In the answer of Mr. Evans, p. 6, l. 35 to l. 40; it was charged that the offer of \$50,000 was a pretended one and Mr. Evans testified in effect at p. 59, l. 30, that he knew it was fictitious. The opinion of the Vice-Chancellor was criticised in that he stated that since 1913 Evans and Lockward had sought to obtain stock control of the company. Certainly, the agreement between Evans and Moore, Ex. D. 6, p. 108, gave Mr. Evans stock control, because it not only kept Mr. Moore from selling the stock to anyone else, but provided that Mr. Moore should vote his shares as directed by Mr. Evans. However, if the Vice-Chancellor had not been warranted in finding the facts as stated, his findings in these respects would have no bearing on the decision of the case.

## Argument of Law.

### POINT I.

The construction put upon the agreement by the Vice-Chancellor that the expression "outside parties," might mean parties not stockholders.

This construction was entirely logical but the Vice-Chancellor did not base his decision of the case on what the meaning of the expression "outside parties" was, but decided it upon the ground that Moore performed on his part the agreement of June 14, 1913, and Evans had not within a reasonable time exercised his privilege of purchasing, p. 123, l. 35.

## POINT II.

(A.)

Under this point it is argued by counsel for the appellants that Lockward's offer of \$10,000, dated November 1, 1915, was withdrawn.

It is hardly necessary to do more than refer the court to the answer of the appellants, p. 6, l. 35 to p. 7, l. 5, where the following is found:

“And on or about November 1, 1915, by collusion with said John C. Moore, and contriving to defraud this defendant, made a pretended offer in writing for said 50 shares of stock of the sum of \$50,000; that at the request of this defendant, and on or about November 2, 1915, complainant withdrew said pretended offer.”

The Court's attention is also directed to the testimony of Mr. Lockward, p. 34, l. 35 to p. 35, l. 2, from which the following is quoted:

Q After you gave notice of the offer of \$50,000, did you sign a paper withdrawing the offer? A I did.

Q Who wrote that out? A Mr. Harrison.

Q Where was it signed? A In our office.

Q And was Mr. Evans there? A Yes.

Q That referred to what offer, that withdrawal? A The offer of \$50,000.

Q Did you ever withdraw the offer of \$10,000? A I did not.”

It is suggested in the second paragraph of sub-division A, that Evans knew nothing of the existence of the \$10,000 offer until the trial. Counsel probably means that he may not have known that Mr. Lockward made the offer, but certainly he knew that an offer of \$10,000 had

been made by someone, because he was so notified by Mr. Moore in the letter of November 29, 1915, Ex. D. 9, p. 112. But Mr. Evans must have known of the \$10,000 offer because in his counter claim, p. 8, l. 30, he states that he tendered \$10,000 to Lockward.

It was entirely clear by the evidence that there was two offers, one of \$50,000, which was a fictitious offer, and the other of \$10,000, which was a genuine offer, and that the withdrawal related only to the \$50,000 offer, because at the time of the signing of the withdrawal that was the only offer which Mr. Evans or his counsel knew about.

It is stated under the sub-division A at the beginning of the fourth paragraph, that Lockward testified that at the time he gave the option to Tansey, December 8, 1915, he did not have an option to purchase Mr. Moore's stock. Of course, if Mr. Moore had not accepted his offer he would not have an option, but the question of Mr. Moore's option to Mr. Tansey was cleared up by the Vice-Chancellor at p. 39, l. 5.

"Q And you urged no objection to the giving of the option by him to the company?

A I advised him to do it; he gave the option knowing that I had an option on it.

*Court.* He gave it then subject to your right to acquire it first and turn it over to the Mutual Company, if they exercised their option?

*Witness.* That was agreed between Mr. Moore and myself."

In view of this testimony it cannot be argued that Mr. Lockward did not have an option on Moore's shares when Moore gave his option to Mr. Tansey.

Counsel for the appellant seems to be confused about the effect of the offer by Mr. Lockward to purchase for \$10,000. It is contended by the respondents that as soon as this offer was made and communicated to Mr. Evans, and not accepted by him within a reasonable time, that the contract of June 14, 1913, was at an end, and that Mr. Moore was then free to sell the stock to anyone at any price he saw fit. Whether or not he gave an option to Mr. Tansey or to Mr. Lockward would make no difference.

In the last paragraph of sub-division A, it is stated that Mr. Evans had every reason to believe and did believe that Lockward's offer of \$50,000 was genuine. The Court's attention is directed to a question asked of Mr. Evans at p. 59, l. 30, by the Vice-Chancellor:

*Court.* "Your controversy with Mr. Lockward seems to arise because he objected to your obtaining these shares of stock from Moore, and you objected to his making a fictitious offer for the stock?"

*Witness.* Yes."

(B.)

Under this sub-division of the second point it is contended that Mr. Moore did not submit to Evans Lockward's offer of \$10,000, and denied Evans his right of inspection.

Bearing in mind the quotation hereinbefore from the agreement of June 14, 1913, it would seem that the letter written by Moore to Evans on November 29, 1915, Ex. 11, p. 113, would leave no doubt about the compliance by Moore with the terms of the agreement.

The statement in the letter that Mr. Moore had received an offer in writing for the shares of stock at the price of \$10,000, and in accord-

ance with the terms of the agreement of June 14, 1913, gave Mr. Evans the first privilege of purchasing the shares, certainly put Mr. Evans into full possession of the fact that an offer had been made. There was nothing in the contract which made it necessary that the identity of the person making the offer should be disclosed.

Evans, upon the receipt of the letter from Moore, replied by claiming the right to inspect the offer before giving his decision. This letter was written under date of December 2, 1915, Ex. D. 12, p. 114, and from that time on Mr. Evans made no effort whatever to examine the offer, although he saw Mr. Moore at frequent intervals, p. 64, l. 10 to l. 40.

If Mr. Evans had any desire to purchase these shares of stock, he certainly would have asked Mr. Moore to let him examine the offer. But it is very apparent that Mr. Evans did not care to purchase the shares, as he was then dealing with Mr. Tansey or the Mutual Tobacco Company, with the intention of selling out all his holdings. On the 8th day of December, 1915, which was less than a week after Mr. Evans wrote his letter claiming the right to inspection, he executed to Tansey an option, Ex. D. 3, p. 105, on all his holdings for a period of four months. The execution of this option had been pending for sometime. And in addition to this, Mr. Evans testified at p. 70, l. 37, as follows:

“Q But if the deal went through with the Mutual, you didn't care what became of Moore's shares; that is true? A Yes.”

It is argued by counsel under this point that Moore could not have delivered the shares because he had executed an option to Tansey. But this option was not signed by Mr. Moore

until December 8. Mr. Evans was given nearly ten days in which to make up his mind.

(C.)

Under sub-division C of the second point it is argued that the consideration of the alleged sale was \$9,250, and no offer at this figure was ever made.

It is first suggested by counsel for the respondents it would make no difference at what figure the stock was finally sold, providing an offer was made in writing and this offer communicated to Mr. Evans. All that Mr. Moore had to do to relieve himself of the agreement of June, 1913, was to communicate to Mr. Evans any offer which he received in writing for his shares. In November, 1915, he received an offer in writing of \$10,000, and communicated the fact to Mr. Evans, who did not avail himself of the opportunity afforded him. Therefore, even though the sale had been made in April, for \$9,250, it has no bearing on the case.

But as a matter of fact, Mr. Lockward's offer was accepted by Mr. Moore in November, subject only to the acceptance by Tansey of the option given by Moore to him, and with the understanding that if Tansey did not exercise his option that Mr. Lockward would make good on his offer. Under these circumstances, Mr. Lockward was entitled to any dividends which might have been declared after November, 1915, as his offer was accepted at that time. And in addition to that, Moore was to receive any increase above \$200 a share which Mr. Lockward might obtain on the stock from Tansey. This appears by the promissory note, Ex. C. 3, p. 102.

**POINT III.**

It is contended under this point that the so-called side agreement, Ex. D. 14, p. 115, between Tansey and Evans had no bearing upon the issues of the case.

The only defense by Mr. Evans to the transfer of the shares relates to the alleged inequitable conduct of Mr. Lockward in making the fictitious offer of \$50,000, and the Vice-Chancellor held that the conduct of Mr. Evans in procuring this secret agreement was inequitable conduct and practically a fraud upon Lockward.

The testimony regarding the so-called "gentlemen's agreement," is vague and indefinite. Mr. Evans testified at p. 49, l. 1, as follows:

"I gained the impression at the time that you would see Mr. Lockward's attorney and go over the situation with him and work out some plan."

Apparently nothing definite was decided upon. Mr. Harrison testified at page 78 that several plans were spoken of. Both he and Mr. Evans testified that Mr. Lockward's attorney was to be consulted. Mr. Lockward testified at p. 81, l. 20, that no arrangement was made.

The conduct of Mr. Evans in taking extra compensation by the secret agreement was a fraud upon Mr. Lockward. Mr. Lockward testified, p. 36, l. 20, that he and Mr. Evans were to receive the same price for their shares, and at p. 41, l. 5, that Mr. Evans was acting partly for him, and at p. 25, that Mr. Evans handled the whole matter.

In the face of this arrangement between Mr. Lockward and Mr. Evans, Mr. Evans by Ex. D. 14, p. 115, which was in consideration of

his securing an option on Mr. Lockward's stock, procured 5,000 additional shares of stock in the Mutual Tobacco Company. To be sure, one of the considerations of this agreement was that Mr. Evans would identify himself with the new company. But the agreement begins with the statement that he was to receive the compensation for procuring Mr. Lockward's stock.

In balancing the equities between the parties, the Vice-Chancellor took into consideration the fraudulent conduct of Mr. Evans in obtaining the secret agreement, and under the circumstances of the case, this agreement had a great bearing on the issues involved. If there was inequitable conduct on the part of Mr. Lockward in making the fictitious offer, it was more than overcome by Mr. Evans' inequitable conduct in first procuring the agreement from Mr. Moore in June, 1913, and secondly, in procuring the secret agreement with Mr. Tansey.

#### POINT IV.

Under this point it is contended that the "gentlemen's agreement" between Lockward and Evans is valid and enforceable, and under the prayer for general relief in the counter claim, Evans is entitled to the specific performance of said agreement.

The testimony in reference to the "gentlemen's agreement" was in dispute and has heretofore been referred to.

The testimony of Mr. Evans at p. 48, l. 30, demonstrates that several plans were discussed, such as dividing the stock; trusteeing it; or having a dummy director in case of a dispute. If counsel desires a specific performance of this agreement, what part of it would the court de-

agree should be performed? Should the stock be divided? Should it be trusteeed; or should there be a dummy director? If the stock is to be divided, should it be divided equally or divided in such portion that the holdings of Lockward and Evans would be equal? Mr. Harrison, in his version of the conversation relating to the "gentlemen's agreement," at p. 78, l. 30, testified that "I thought the best way was to acquire the stock by the corporation, or by one or both of the gentlemen together, divide the stock evenly, and put qualifying shares in the hands of the dummy."

Mr. Harrison further testified at p. 79, l. 30, that a tentative agreement should be made. The following is quoted from his testimony at p. 79, l. 36:

"Q What tentative agreement are you referring to? A To the suggested division of the stock.

Q Or the trusteeing of the stock? A Yes. And my recollection further is, although of this I am not certain, that Mr. Thomas C. Provost's name was brought in as Mr. Lockward's counsel at that time. I know within a very short time thereafter I saw Mr. Provost in reference to the matter of the options to the Mutual Tobacco Company."

#### POINT V.

Under this point it is urged that Mr. Lockward having had notice of Mr. Evans' rights in the premises, should be compelled in equity to transfer the Moore stock to Evans upon the restoration of the parties to their original status.

It is true that Mr. Lockward had knowledge of the agreement of June, 1913, between Mr. Moore and Mr. Evans.

It is argued that if Mr. Lockward's offer of \$10,000 was *bona fide*, Mr. Evans may now avail himself of his right under the agreement of June, 1913, and buy the same from Mr. Moore.

If it is conceded that Mr. Lockward's offer was *bona fide*, it must also be conceded that it was made in November, 1915, and that in the same month Mr. Evans had notice from Mr. Moore that he, Mr. Moore, had received an offer in writing for the stock at the price of \$10,000.

The Vice-Chancellor in deciding the case, stated that Mr. Evans' delay in acting upon the notice from Mr. Moore, was unreasonable, and, therefore, he, Mr. Evans, had lost his rights under the agreement with Mr. Moore.

It is argued that Mr. Evans knew nothing of the offer by Mr. Lockward of \$10,000. He admits that he did have such knowledge in his counter claim, p. 8, l. 30. The following is quoted from the first paragraph of the counter claim:

“He (Mr. Evans) was informed that the consideration of the pretended sale by said Moore of said 50 shares of stock to the complainant, was the sum of \$10,000, which amount this defendant thereupon tendered to said Moore and complainant, both of whom refused to receive the same.”

The counter claim was filed December 20, 1916.

No attempt was made at the hearing to prove his tender of \$10,000, but at the close of the case, p. 101, l. 20, a tender was made by counsel of \$10,000 for the 50 shares of stock.

The only theory upon which Mr. Evans would be entitled to succeed on his counter claim, would be that Mr. Moore had received an offer for his stock in writing and communicated it to Mr. Evans, thereby giving him (Mr. Evans) a right to purchase the stock for the amount of the offer.

If it is conceded that Mr. Moore did receive a *bona fide* offer and communicated it to Mr. Evans in November, 1915, certainly Mr. Evans' delay in not taking advantage of it until the hearing of the case in May, 1917, was an unreasonable delay.

Mr. Evans had knowledge of the fact that Mr. Moore had given an option to Mr. Tansey, and apparently made no objection to it. At p. 73, l. 10, Mr. Evans testified as follows:

Q "You said in answer to Mr. Van Blarcom about an understanding with Tansey, that Moore received the same price for his stock that you received for yours; do you know whether Moore also gave an option to the Mutual Company or to Tansey? A I understand that he did, as a result of this offer of November 29, or whatever date it is.

Q Do you know when he gave that option? A Sometime in December, 1915."

If the sale from Mr. Moore to Mr. Lockward should be set aside and Mr. Evans granted relief on his counter claim, he would still be in a position to obtain the benefit on his alleged agreement with Mr. Moore, after speculating upon the sale of his shares to Tansey and upon the reaping of large secret profits through that deal. This would be absolutely unfair to Mr. Moore and Mr. Lockward.

It is contended by the respondents that Mr. Moore could have done nothing further than he did in order to relieve him of the contract of June, 1913, between him and Mr. Evans. Mr. Evans was afforded the opportunity of purchasing the shares for \$10,000, a price which was fair, and all that he did was to claim the right to inspect the offer, which right of inspection he never exercised, although he had frequent opportunities so to do.

Under these circumstances, how can it be argued that Mr. Evans has no further rights under the agreement?

It cannot be argued that Mr. Evans was prejudiced in any way by the fictitious offer of \$50,000. The situation would be entirely different if the \$50,000 offer was the only one communicated to Mr. Evans, and it developed at the trial that this offer was not *bona fide*. Under these circumstances, Mr. Evans might well complain that the fictitious offer prejudiced him in the purchase of Moore's stock, for the reason that he could not afford to pay \$50,000, but when he had a chance to purchase the stock for \$10,000, a price which he admits, p. 65, l. 15, was fair, he could have suffered no harm by reason of the fictitious offer. Mr. Evans gives as his reason for not purchasing the stock, that he had given his word to Mr. Lockward that he would not do so. With all due respect to his sense of honor in not purchasing the shares, it does not square with his inequitable conduct in procuring the agreement from Mr. Tansey. The more reasonable view of the matter is that Mr. Evans did not want the shares because he thought that the Mutual Tobacco Company or Mr. Tansey would purchase his entire holdings.

It must be borne in mind that an offer was made by Mr. Lockward, accepted by Mr. Moore, and a promissory note of \$10,000 executed and delivered between the parties, upon which payments have been made. Assuming that the complainant is denied the transfer of these shares, what defense has he to the payment of the note, or what right of recovery for the moneys paid thereunder?

Under these circumstances, and at this late day, it would seem that Mr. Evans should be left to an action at law to recover against Mr. Moore any damage which he may have sustained by reason of the violation of the contract of June, 1913; and as to the "gentlemen's agreement" between Mr. Evans and Mr. Lockward, Mr. Evans has his remedy at law against Mr. Lockward for the breach of the same if any there was.

Mr. Evans could not have relied upon the so-called "gentlemen's agreement" because he never took the trouble to ascertain who made the offer to Mr. Moore. And he, therefore, did not rely upon his alleged agreement that neither he nor Mr. Lockward would purchase the stock. It might well have been that Mr. Moore's offer came from someone entirely outside of the company. If such has been the case, and Mr. Evans did not avail himself of the opportunity to purchase, certainly his rights under the agreement would be extinguished.

As above mentioned, it is contended by the respondents that Mr. Evans has ample remedy in an action at law.

The following is quoted from the opinion of Vice-Chancellor Stevens in *Farrell v. Passaic Water Co.*, 82 N. J. Eq., at p. 104:

"The clause (referring to cancellation of the registration of a bond) was probably

suggested by the similar one put in the ordinary stock certificate, as to which Chancellor Green said: 'The title of the holder is in no-wise affected by a provision in the charter or bylaws of the corporation that the stock is transferable only on the books of the corporation. Such a provision is intended merely for the protection and benefit of the corporation.' "

In the Farrell case, Mr. Atkinson in his lifetime gave to Miss Farrell in her lifetime, a bond registered in his name. Upon the death of the parties, the administratrix of the estate of Miss Farrell filed a bill against the Passaic Water Co. and the executor of Mr. Atkinson to compel the transfer of the bond.

The following is quoted from the opinion of Vice-Chancellor Stevens, at page 105:

"Considering, as I do, that the question as between the administratrix of Miss Farrell and the executor of Mr. Atkinson, is one of legal title—title of which the law courts take cognizance—it would seem to follow that if there were a real doubt as to who was the legal owner, that doubt would have to be, under our system, settled by the law courts. There is, however, no dispute as to the material facts and no reasonable doubt as to the inference to be drawn from them. The case really seems to be one between the administratrix and the water company; Atkinson's executors being proper parties because their testator stands upon the company's books as registered owner."

Inasmuch as Lane & Lockward Company has interposed no defense in this case, it would seem from the Farrell case, that the dispute be-

tween Mr. Evans, Mr. Moore and Mr. Lockward should be settled in the court of law.

Mr. Evans came into chancery asking to have the sale set aside and the shares transferred to him. He is, therefore, seeking relief. If the maxim, "He who comes into equity must come with clean hands," is to be applied in this case, it should be applied to him.

### POINT VI.

Complainant is entitled to a decree of the Court of Chancery to compel the transfer of the shares.

The power of the Court of Chancery to compel a transfer of stock on the books of a corporation, has been recognized and rests on the theory that complainant is the equitable owner of the stock and seeks by the transfer to consummate a legal title.

*Archer v. American Water Works*, 50 Eq., 33-50.

*Reilly v. Absecon Land Co.*, 75 Eq., 71.

*Morris v. Hussong Dyeing Machine Co.*, 81 Eq., 256.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

ANDREW VAN BLARCOM,  
*Of Counsel with Respondents.*

Submitted November Term, 1917.

The first part of the book is devoted to a general  
 introduction to the subject of the history of the  
 world. It is divided into two parts, the first of  
 which is devoted to the history of the world from  
 the beginning of time to the present day, and the  
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THE HISTORY OF THE WORLD

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