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# NEW JERSEY

## Court of Errors and Appeals

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IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,  
*Complainants,*

AND

HENRY M. BLACK, FARMERS'  
TELEPHONE COMPANY AND  
NEW YORK TELEPHONE COM-  
PANY,

*Defendants.*

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THIRD AMENDED BILL.

10

*(Filed April 2, 1919.)*

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

Complainants, Robert N. Keely, of Brown's Mills,  
New Jersey, and George Pfeiffer, Jr., of Merchantville,  
New Jersey, on behalf of themselves and all other stock-  
holders of the Farmers' Telephone Company, who de-  
siring to become parties may contribute to the expense 20  
of this suit, respectfully show that:

New Jersey State Library



1. They are stockholders of the Farmers' Telephone Company, a corporation of New Jersey, and that this amended bill is filed by them on behalf of themselves and all other stockholders of said company who shall come in and contribute to the expense of this suit, and in behalf of the said corporation.

2. Defendant, Farmers' Telephone Company, is a corporation of the State of New Jersey, incorporated under the act entitled "An act to incorporate and regulate telegraph companies," its certificate of incorporation having been filed in the office of the Secretary of State on or about June 14th, 1902.

3. That the said Farmers' Telephone Company owns and operates a telephone line and service in Burlington and Ocean counties in this State, having about 1,220 miles of wireage, exchange offices and poleage and maintains active operations on its said lines. That it is a going concern having fully 1,200 subscribers, and that its gross receipts for the year ending December 31st, 1916, were \$31,568.25. That a United States Cantonment called Camp Dix was established during 1917 and is now constructed and in operation at Wrightstown, Burlington County, within the territory of said corporation, the Farmers' Telephone Company. This should have largely increased the business of and the earning capacity of said company.

4. Defendant, New York Telephone Company, is a corporation of the State of New Jersey incorporated under the act entitled "An act to incorporate and regulate telegraph companies."

5. The New York Telephone Company owns and operates a telephone line and service immediately contiguous to the territory of the Farmers' Telephone Company.

6. By various agreements between the said companies, together with the Delaware and Atlantic Telegraph and Telephone Company, the said New York Telephone Company and the Delaware and Atlantic Telegraph and Telephone Company had agreed, prior to June 1,



1917, to keep out of the territory of the Farmers' Telephone Company.

7. Complainant, Robert N. Keeley, owns 75 shares of the capital stock of the Farmers' Telephone Company and has owned same since the incorporation of the company, and complainant, George Pfeiffer, Jr., owns 5 share of its capital stock, the total capitalization of said corporation being 2,000 shares of a par of \$50.

8. One, Henry M. Black, is now and for many years has been the president and one of the directors of the 10 Farmers' Telephone Company.

9. On or about June 1st, 1917, the New York Telephone Company desired to become possessed of and do business in that part of the exclusive territory of the Farmers' Telephone Company, which included the afore-said United States Cantonment called Camp Dix. Through its officers and agents it thereupon approached the said Henry M. Black, president and director of the said Farmers' Telephone Company, for the purpose of acquiring *rights* from the Farmers' Telephone Com- 20 pany and secured from the said Henry M. Black a written contract executed by him as president of said corporation, the said contract being dated June 29th, 1917, a copy of which is hereto attached and made part hereof and marked "Exhibit A."

10. The said New York Telephone Company offered to said Henry M. Black, president and director of the Farmers' Telephone Company, to pay the sum of \$45,000 for such *rights*, but the said negotiations were so handled by its officers and said Henry M. Black that 30 the agreements did not provide that the said sum of \$45,000 was to be paid to the said Farmers' Telephone Company, but that it was to be paid to the said Henry M. Black personally as a secret profit to him in fraud of the rights of the Farmers' Telephone Company, its stockholders and creditors.

11. On or about June 1st, 1917, the said New York Telephone Company desired also to secure immediate control of the board of directors of the Farmers' Tele-



phone Company so as to immediately control the business policy of the said Farmers' Telephone Company.

12. For the purpose of securing the said contract, marked "Exhibit A," for securing the immediate control of the board of directors of the Farmers' Telephone Company and for securing various other actions by the Farmers' Telephone Company, as set forth in "Exhibit B" hereto attached, the said New York Telephone Company, through its officers and agents, in
- 10 fraud of the rights of the Farmers' Telephone Company, its stockholders and creditors, entered into another contract with the said Henry M. Black, well knowing him to be the president of the Farmers' Telephone Company and one of its board of directors, by which it agreed that if he would secure the said contract from the Farmers' Telephone Company and would deliver to it control of the board of directors of the said company and would secure the various other actions by it, the said New York Telephone Company would purchase
- 20 from him, the said Henry M. Black, all the stock he could deliver to it at the price of \$50 per share, and would also pay him a secret profit measured by the amount of stock he should turn over to it; \$45,000 if he turned over to the said New York Telephone Company all of the capital stock of the said Farmers' Telephone Company; \$15 per share if he turned over to it more than 80 per cent. of the said stock; \$10 per share if he turned over more than 75 per cent., and \$5 per share if he turned over to it more than 55 per cent. of
- 30 the stock. This contract is dated July 2d, 1917, a copy of which is hereto attached and made part hereof and marked "Exhibit B."

13. By the said contract dated July 2d, 1917, the said Henry M. Black also agreed with the New York Telephone Company, in fraud of the rights of the Farmers' Telephone Company, its stockholders and creditors, that for a period of one year or until the last delivery of stock, the said Farmers' Telephone Company would not allow the debts of such company to exceed the sum of



\$5,000 or to exceed the aggregate amount of cash on hand and in banks and collectible bills and accounts receivable of such company; that no action should be taken by the Farmers' Telephone Company to secure an increase of authorized capital stock or change in its par value, classification or rights; that the books and accounts of the Farmers' Telephone Company should be kept in accordance with the method and system of accounts prescribed for telephone companies by the Board of Public Utilities of the State of New Jersey, 10 and that the auditors, accountants and agents of the Bell Telephone Companies should have access to and right to inspect and audit the books and accounts of said Farmers' Telephone Company; that no dividends should be declared or paid nor any distribution of capital or surplus made by the Farmers' Telephone Company; that the Farmers' Telephone Company should not sell, assign, transfer or otherwise dispose of any of its lines, plant, property or business or mortgage or otherwise encumber the same without the written consent of the 20 New York Telephone Company first obtained, and that the lines, plant and property of the Farmers' Telephone Company should be diligently preserved, maintained and operated at their present standard, and that the Farmers' Telephone Company should not suffer or allow any encumbrance or lien on or any impairment of the said lines, plant or property.

14. This contract of June 29th, 1917, was a secret contract between said New York Telephone Company and said Henry M. Black, and its contents were never 30 known by any of the directors or stockholders or complainants until the time of filing this amended bill.

15. The said Henry M. Black and the New York Telephone Company at once began to carry out the arrangements which had been agreed upon by them in the two contracts of June 29th, 1917, and July 2d, 1917. The contract of June 29th, 1917, was presented by the said Henry M. Black to the alleged board of directors of the Farmers' Telephone Company and ratified by it



at its meeting held July 8th, 1917, without disclosing to this alleged board of directors and its members his secret agreement or the secret profit which he was to make in carrying out this transaction. Through the influence of the said Henry M. Black the Farmers' Telephone Company did not declare a dividend at the dividend period following the said dates of said contracts; the liabilities of the said corporation were reduced and no action was taken by it contrary to the

10 said agreement.

16. The board of directors of said corporation was on July 8th, 1917, and is still composed of ten individuals, there being one vacancy on the board, all of whom, except the said Henry M. Black and the said M. Warner Hargrove, prior to July 8th, 1917, the date of the alleged ratification of said agreement, had sold all of their stock in said Farmers' Telephone Company and have not since then owned any stock in said corporation and therefore had deprived themselves of the right of being

20 directors of said corporation, although they still retain the office and attempt to exercise its powers.

17. The said Henry M. Black was on or about June 1st, 1917, the owner of about 800 shares of the total capitalization of 2,000 shares of the said Farmers' Telephone Company, and without disclosing the secret profit which he was to make in this transaction and to further carry out his part of said agreements, purchased from the various holders thereof at a price of \$50 per share, stock of the Farmers' Telephone Com-

30 pany until he had acquired a total of 1,919 shares, being all the stock of said corporation other than that owned by complainants and one share owned by one, M. Warner Hargrove. That 1,909 shares of this stock he has turned over and assigned under said agreement to the New York Telephone Company and has received from said company the said price of \$50 per share, together with the additional consideration of \$15 per share, and holds to turn over the other ten shares of



stock to the said New York Telephone Company for the said price of \$50 per share and \$15 additional consideration per share, so that he has received from the said New York Telephone Company in fraud of the rights of the Farmers' Telephone Company, its stockholders and creditors, a secret gratuity or bonus of \$28,635, and has agreed to turn over the other 10 shares when he is to receive a further secret gratuity of \$150, said sum of \$28,635 having been paid and such further sum of \$150 to be paid by the New York Telephone 10 Company, and having been received and to be received by the said Henry M. Black as a secret gratuity or bonus for the purpose of securing the agreement dated June 29th, 1917, between the Farmers' Telephone Company and the New York Telephone Company and the other acts hereinbefore set forth.

18. The total capitalization of the Farmers' Telephone Company is 2,000 shares of stock of the par of \$50 and the fair value of said stock is not more than \$50 per share. 20

19. Acting under the terms of said contract of June 29th, 1917, the New York Telephone Company has established itself in the territory alleged to have been leased to it by the Farmers' Telephone Company and has since then constructed its lines and wires and conducted its business in such released and assigned territory.

20. The Farmers' Telephone Company has no board of directors and no officers competent and qualified to conduct its affairs or to bring this suit. That if new 30 officers were elected they would be elected by the vote of the New York Telephone Company and the said Henry M. Black who perpetrated this fraud on the Farmers' Telephone Company.

Complainants are without adequate remedy in the courts of law, and therefore pray:

1. That Henry M. Black, the Farmers' Telephone Company and New York Telephone Company, who are



the defendants to this suit, may answer this third amended bill of complaint, without oath, and each statement therein contained.

2. That the said Henry M. Black may be decreed to pay into the treasury of the Farmers' Telephone Company the profit of \$28,635 received by him and any other profits, which he may make by reason of the contract entered into between him and the said New York Telephone Company.

10 3. That the said New York Telephone Company may be decreed to pay into the treasury of the Farmers' Telephone Company the sum of \$45,000, and any other profit which it subverted from the Farmers' Telephone Company and agreed to pay to the said Henry M. Black under the contract between the said New York Telephone Company and the said Henry M. Black.

4. That writs of subpœna may issue, commanding said defendants to answer this amended bill of complaint, without oath, and to abide by such decree as  
20 this court may make in the premises.

MARTIN V. BERGEN,

THOMAS P. CURLEY,

*Solicitors and Counsel with Complainants.*

EXHIBIT "A."

THIS AGREEMENT, Made and entered into this 29th day of June, 1917, by and between THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY, a corporation of the State of New Jersey (hereinafter referred to as the Delaware Company), party  
30 of the first part, the NEW YORK TELEPHONE COMPANY, a corporation of the States of New Jersey and New York (hereinafter referred to as the New York Company), party of the second part, and the FARMERS' TELEPHONE COMPANY, a corporation of the State of New Jersey (hereinafter referred to as the Farmers' Company), party of the third part: *Witnesseth:*



WHEREAS, the New York Company is the successor by connection and consolidation of The New York and New Jersey Telephone Company; and

WHEREAS, by an agreement dated the twenty-ninth day of July, 1908, between the Delaware Company of the first part; The New York and New Jersey Telephone Company of the second part; and the Farmers' Company of the third part; which agreement superseded that of the twenty-seventh day of April, 1908, between the same parties, certain territory operated by the Delaware Company and the said The New York and New Jersey Telephone Company was sublicensed to the Farmers' Company, and connections between the lines of the several companies were established for the interchange of communications between the patrons of the several companies under conditions as fully set forth in said agreement, and which is hereinafter referred to as the Original Agreement; and **16**

WHEREAS, by a Supplementary Agreement, dated the first day of November, 1909, between the Delaware Company of the first part, and the Farmers' Company of the second part; certain additional territory operated by the Delaware Company was sublicensed to the Farmers' Company and connections between the lines of the said companies were established for the interchange of communications between the patrons of both said companies, under conditions as fully set forth in said Supplementary Agreement and which is hereinafter referred to as the Supplementary Agreement; and **20**

WHEREAS, by a second Supplementary Agreement, dated the second day of August, 1910, and certain "Traffic Letters" of various dates, between the Delaware Company of the first part and the Farmers' Company of the second part, certain changes in toll rates and methods of settlement were defined, which Agreement and "Traffic Letters" are hereinafter referred to as the Second Supplementary Agreement and "Traffic Letters"; and **30**



WHEREAS, by a third Supplementary Agreement, dated the sixteenth day of August, 1912, between the Delaware Company of the first part and the Farmers' Company of the second part, certain changes were made in the above mentioned Agreements and "Traffic Letters"; and

- 10 WHEREAS, in order to furnish adequate telephone service at the proposed United States army cantonment and environs about to established at or near Wrightstown, New Jersey, the construction of new and additional telephone lines, plant and equipment and the reconstruction of existing lines will be required, which, with their maintenance and operation will cost in excess of fifty thousand dollars (\$50,000); and

- 20 WHEREAS, in view of the fact that such cantonment is to be especially established to meet the necessities of the United States government in the present war and owing to the uncertainty of the continuance of such cantonment, the Farmers' Telephone Company does not feel warranted in incurring the aforesaid expenditures and the Bell Companies are willing to assume the furnishing of such service and to that end it is mutually desired by the parties hereto that certain changes, as by this agreement provided, be made in the above mentioned Agreements and "Traffic Letters";

- 30 Now, Therefore, in consideration of the premises and the sum of one dollar (\$1.00) paid by each of the parties hereto unto the other, the receipt whereof is hereby mutually acknowledged, and the mutual covenants and agreements herein contained, the respective parties do mutually covenant and agree as follows, viz:

*First:* That this agreement when executed shall be supplementary to the Original and Supplementary Agreements and "Traffic Letters," and shall not, except in so far as shall be specifically stated herein, alter the conditions of said Original and Supplementary Agreements and "Traffic Letters."

*Second:* The territory covered by the Original Agreement and Supplementary Agreements and "Traffic



Letters" shall be and hereby is modified so as to release and exclude therefrom that within the proposed United States army cantonment, and its environs, contemplated to be or which may hereafter be established at or near Wrightstown, New Jersey.

*Third:* The Farmers' Company hereby consents to the furnishing by the Delaware Company and the New York Company, or either or both of them, of telephone service within the territory released and excluded as aforesaid, and hereby releases and discharges the Delaware Company and the New York Company severally from any further obligation under or by virtue of the Agreements and "Traffic Letters" aforesaid with respect to the territory so released and excluded except so far as said territory hereby becomes part of the territory operated by the Delaware Company and the New York Company or either or both of them. 10

*Fourth:* The Farmers' Company hereby grants to the Bell Companies, or either or both of them, the right to use its poles, lines, plant and equipment within the territory so released, at the usual rental or attachment charges therefor, with the right, at their own cost and expense, to relocate, replace and reconstruct, as they may from time to time find necessary or expedient, any of the poles, cross arms or fixtures of the Farmers' Company within the territory so released; any such poles, upon their replacement as above provided, shall become the property of the Farmers' Company and thereafter the Bell Companies, and either and both of them, shall have the right permanently to use such poles without the payment of any rental or attachment charges therefor. 20 30

*Fifth:* The Farmers' Company shall receive upon any and all toll or long distance messages originating on the lines of the Bell Companies or either of them, within the territory released as aforesaid, during the first year following the opening of said cantonment and the establishment of service by the Bell Companies or either or both of them through permanent boards, a



sum equal to five per cent. (5%) of such toll or long distance messages (not exceeding, however, five cents—5c.—on any one message) and thereafter, after the expiration of the first year, a sum equal to ten per cent. (10%) of such toll or long distance messages (not exceeding, however, ten cents—10c.—on any one message).

**10** *In witness whereof*, the parties hereto have signed their corporate names and affixed their corporate seals to this agreement, in triplicate, the day and year first above written.

THE DELAWARE AND ATLANTIC TELEGRAPH AND  
TELEPHONE COMPANY

(Signed) By F. H. BETHELL, President, [L. S.]

NEW YORK TELEPHONE COMPANY

By F. H. BETHELL, V. President [L. S.]

FARMERS' TELEPHONE COMPANY,

By HENRY M. BLACK, Pres't. [L. S.]

**20**

#### EXHIBIT B.

**30** THIS AGREEMENT, Made the 2nd day of July, 1917, by and between HENRY M. BLACK, of Jobstown, Burlington County, New Jersey, party of the first part (hereinafter referred to as the Vendor), and the NEW YORK TELEPHONE COMPANY, a corporation of the States of New Jersey and New York, having its principal office in the State of New Jersey at No. 281 Washington Street, in the City of Newark, and in the State of New York at No. 15 Dey Street, in the City of New York, and THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY, a corporation of the State of New Jersey, having its principal office at No. 51 Federal Street, in the City of Camden, New Jersey, parties of the second part (hereinafter collectively referred to as the Bell Companies), *Witnesseth*:

WHEREAS, the Vendor, as an inducement to the Bell Companies to enter into this agreement, represents to the Bell Companies that the Farmers' Telephone Com-



pany, having its principal office at Browns Mills, New Jersey, is a telephone and telegraph corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and is possessed of a good and indefeasible title in and to the telephone and telegraph lines and equipment in and about Allentown, Bordertown, Columbus, Creamridge, New Egypt, Pemberton, Perrineville, Imlaystown, Chesterfield and Browns Mills, New Jersey, operated by and in the name of the Farmers' Telephone Company, free from all liens or encumbrances of every kind or nature, and has good and sufficient franchises, privileges, rights, rights of way, easements and consents for the construction, maintenance and operation thereof; that the present structural value of said lines, plant and physical property of said Farmers' Telephone Company is not less than one hundred and forty-five thousand dollars (\$145,000.); that all the liabilities, debts and obligations of every kind or character whatsoever (other than capital stock) of the Farmers' Telephone Company do not, at the date of this agreement, exceed the sum of five thousand dollars (\$5,000.); that the authorized capital stock of said Farmers' Telephone Company is the sum of one hundred thousand dollars (\$100,000.) consisting of two thousand (2,000) shares of common stock of the par value of fifty dollars (\$50.) each; that no action has been taken by said Farmers' Telephone Company authorizing or attempting to authorize any increase in the amount of its said authorized capital stock or any change in the par value, classification or present rights of said two thousand (2,000) shares of capital stock now outstanding; that all of said authorized capital stock has been duly and lawfully issued by said Farmers' Telephone Company and is now outstanding and is fully paid and non-assessable; that he (the Vendor) is the holder and owner of at least fifty-five per cent. (55%) of such issued and outstanding capital stock and is in a position to acquire and is willing to sell, deliver and transfer to the Bell Companies or procure to be sold, delivered and transferred to the Bell Companies. the



price and upon the terms and conditions hereinafter set forth, all, or at least an amount in excess of fifty-five per cent. (55%) of all of the aforesaid issued and outstanding capital stock of said Company; and that the books and accounts of said Farmers' Telephone Company have been kept and are being kept strictly in accordance with the method and system of accounts prescribed for telephone companies by the Board of Public Utility Commissioners of New Jersey; and

- 10 WHEREAS, the Bell Companies, relying solely upon the truth of the aforesaid representations by the Vendor enter into this agreement;

*Now, therefore,* in consideration of the premises, and of the mutual covenants and premises herein contained, the parties hereto covenant and agree as follows:

- First:* The Vendor hereby agrees to sell and deliver to the Bell Companies or their nominee, upon a date not later than the first day of August, 1917, and at the price hereinafter stated, fifty-five per cent. (55%), viz.:  
20 eleven hundred (1100) shares of the par value of fifty dollars (\$50) each of the aforesaid issued and outstanding capital stock of said Farmers' Telephone Company, and the Bell Companies hereby agree upon the presentation and lawful delivery to them of their nominee, within said period, of such eleven hundred (1100) shares, to purchase and pay for the same at the price hereinafter stated, provided and upon condition:

- 30 (A) That the Farmers' Telephone Company shall have duly released, in writing, so much of the territory sub-licensed to it by the respective Bell Companies under the sub-license agreement or agreements now in force between the Farmers' Telephone Company and the Bell Companies, as is within the proposed United States army cantonment, and its environs, contemplated to be established or which may hereafter be established at or near Wrightstown, New Jersey, and that said Farmers' Telephone Company shall have formally consented, in writing, to the fur-



nishing by the Bell Companies, or either or both of them, of telephone service within the territory so released, and has released and discharged the Bell Companies severally from any further obligations under or by virtue of said sub-license agreement or agreements with respect to the territory so released except so far as said territory thereby shall become a part of the territory operated by the Bell Companies, and said Farmers' Telephone Company shall have agreed in 10  
writing to the use by the Bell Companies or either or both of them of the poles, lines, plant and equipment of the Farmers' Telephone Company within the territory so released, at the usual rental or attachment charges therefor; and

(B) That the authorization of the Board of Public Utility Commissioners of the State of New Jersey shall have been procured to the aforesaid sale and delivery and purchase of said eleven hundred (1100) shares of capital stock 20  
and to transfer thereof upon the books of the Farmers' Telephone Company in the name of the Bell Companies or their nominee, and to the sale and delivery to the Bell Companies or their nominee of all or any part of the remaining outstanding shares of the capital stock of said Farmers' Telephone Company and to the transfer thereof upon the books of said Company in the name of the Bell Companies or their nominee, as by this agreement contemplated. 30

The price to be paid by the Bell Companies and to be accepted by the Vendor for the aforesaid eleven hundred (1100) shares of capital stock of the Farmers' Telephone Company shall be the sum of fifty-five thousand dollars (\$55,000).

*Second:* The Bell Companies, provided the said eleven hundred (1100) shares of the capital stock of the Farmers' Telephone Company have been duly sold, delivered and transferred to them or their nominee within



the time and upon the terms and conditions set forth in section "FIRST" hereof and the provisos of said section have been fully met and complied with, shall at any time and from time to time within one year after the date of this agreement, purchase at the price of fifty dollars (\$50) per share any or all of the remaining issued and outstanding capital stock of said Farmers' Telephone Company which the Vendor may acquire or procure to be sold, delivered and transferred to the Bell

**10** Companies or their nominees.

*Third:* The Vendor, as an express condition of this agreement, covenants, warrants and guaranties that:

(A) The Farmers' Telephone Company, having its principal office at Browns Mills, New Jersey, is a telephone and telegraph corporation duly organized and existing under and by virtue of the laws of the State of New Jersey.

**20** (B) The authorized capital stock of said Farmers' Telephone Company is the sum of one hundred thousand dollars (\$100,000), consisting of two thousand (2,000) shares of common stock of the par value of fifty dollars (\$50) each;

**30** (C) The Farmers' Telephone Company is possessed of a good and indefeasible title in and to the telephone and telegraph lines and equipment in and about Allentown, Bordentown, Columbus, Creamridge, New Egypt, Pemberton, Perrineville, Imlaystown, Chesterfield and Browns Mills, New Jersey, operated by and in the name of said Farmers' Telephone Company, free from all liens or encumbrances of every kind or nature and has good and sufficient franchises, privileges, rights, rights of way, easements and consents for the construction, maintenance and operation thereof;

(D) That the present structural value of said lines, plant and physical property of said Farmers' Telephone Company is not less than one hun-



dred and forty-five thousand dollars (\$145,000) ;

(E) All of the liabilities, debts and obligations of every kind or character whatsoever (other than capital stock) of the Farmers' Telephone Company do not at the date hereof exceed the sum of five thousand dollars (\$5,000) ; and they will not exceed said sum at or during any time or period affected by this agreement ; that up to the first day of June, 1917, the salary or compensation for services of all the officers 10 and of the agents, representatives and employees of said Farmers' Telephone Company has been fully paid, satisfied and discharged, and that at the time of the last sale, delivery and transfer of stock hereunder said Company shall not have any liabilities, debts or obligations outstanding—that is to say the aggregate amount of all the outstanding liabilities, debts and obligations of said Company shall not exceed the aggregate amount of cash on hand and in banks and collectible bills and accounts receivable of such 20 Company at the time of such last sale, delivery and transfer of stock hereunder.

(F) No action has been or will be taken by said Farmers' Telephone Company to authorize or attempt to authorize any increase in the amount of its authorized capital stock or any change in the par value, classification or present rights of said two thousand (2,000) shares of capital stock now outstanding ;

30

(G) The entire two thousand (2,000) shares of the par value of fifty dollars (\$50) each of said authorized capital stock has been duly and lawfully issued by said Farmers' Telephone Company and is now outstanding and is fully paid and non-assessable ; that the Vendor is the holder and owner of at least fifty-five per cent. (55%) thereof, viz.: eleven hundred (1100) shares of



the par value of fifty dollars (\$50) each, and that each and every one of said eleven hundred (1100) shares is owned and possessed by him free from all liens, claims or demands in law or in equity;

10 (H) The books and accounts of said Farmers' Telephone Company have been kept and are being and will continue to be kept strictly in accordance with the method and system of accounts prescribed for telephone companies by the Board of Public Utility Commissioners of the State of New Jersey, and the auditors, accountants and agents of the Bell Companies shall, during the time or period affected by this agreement, have access to and right to inspect and audit the books and accounts of said Company;

20 (I) During any time or period affected by this agreement no dividend shall be declared or paid, nor any distribution of capital or surplus made or attempted to be made by the Farmers' Telephone Company;

(J) During any time or period affected by this agreement, the Farmers' Telephone Company shall not sell, assign, transfer or otherwise dispose of any of its lines, plant, property or business, or mortgage or otherwise encumber the same, without the written consent of the Bell Companies first obtained;

30 (K) During the time or period affected by this agreement the lines, plant and property of the Farmers' Telephone Company shall be diligently preserved, maintained and operated at their present standard (but the Vendor shall not be responsible under this subdivision for depreciation due to ordinary wear and tear or for damages due to extraordinary storms, riots, insurrections or acts of war), and said Company shall not suffer or allow any encumbrance or lien on or any impairment in the value of said lines, plant or property or any part thereof.



*Fourth:* In the event that within one year from the date of this agreement the Vendor has sold or procured to be sold, delivered and transferred to the Bell Companies or their nominee all of the said issued and outstanding capital stock of the Farmers' Telephone Company at the price of fifty dollars (\$50) per share as aforesaid, and all the provisions and conditions of this agreement shall have been carried out and complied with so far as the Bell Companies are able to ascertain, then the Bell Companies shall pay to the Vendor the further sum of forty-five thousand dollars (\$45,000), or **10**

In the event that at the expiration of one year from the date of this agreement less than all but more than fifty-five per cent (55%) of the said issued and outstanding capital stock of the Farmers' Telephone Company shall have been sold, delivered and transferred to the Bell Companies or their nominee at the price of fifty dollars (\$50) per share as aforesaid and all the provisions and conditions of this agreement shall have been carried out and complied with so far as the Bell Companies are at such time able to ascertain, then the Bell Companies shall pay to the Vendor a further sum for each and every share of such capital stock as has at such time been so sold, delivered and transferred to the Bell Companies or their nominee, as follows: **20**

Fifteen dollars (\$15) for each and every such share if over eighty per cent. (80%) of said issued and outstanding capital stock has been so sold, delivered and transferred; or **30**

Ten dollars (\$10) for each and every such share if over seventy-five per cent. (75%) has been so sold, delivered and transferred; or

Five dollars (\$5) for each and every such share if over fifty-five per cent. (55%) of said issued and outstanding capital stock has been so sold, delivered and transferred.

*Fifth:* The covenants, warranties and guaranties enumerated and set forth in section "*Third*" shall be



continuing, and shall survive any payments or adjustments made by the Bell Companies hereunder, and the Bell Companies by making such payments and adjustments shall not be considered to have waived or surrendered any claim or cause of action which they might otherwise have had on account of untruth of or failure to carry out any of such covenants, warranties or guaranties.

*Sixth:* No waiver of any provision or provisions of  
 10 this agreement shall be valid or of any force unless made in writing, signed by all the parties hereto and specifying with particularity the nature, extent and occasion of such waiver. The waiver, in any instance, of any provision or provisions of this agreement shall not be construed to be a general waiver, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

*Seventh:* This agreement shall bind and enure to the benefit of the heirs, executors, administrators and assigns  
 20 and the successors and assigns of the respective parties hereto.

*In Witness Whereof*, the parties have executed this agreement under seal in duplicate, and have delivered the same on the day and year first above written.

Signed, sealed and delivered  
 in the presence of:

T. P. SYLVAN.  
 [SEAL]

HENRY M. BLACK.  
 [L. S.]

NEW YORK TELEPHONE COMPANY

30 By F. H. BETHELL,  
*Vice President.*

Attest:

WALTER BROWN,  
*Secretary.*

[SEAL] THE DELAWARE AND ATLANTIC TELEGRAPH  
 AND TELEPHONE COMPANY,

By F. H. BETHELL,  
*President.*

Attest:

W. S. PEIRSOL,  
*Secretary.*



STATE OF NEW YORK,  
COUNTY OF NEW YORK, } ss.

On this 2d day of July, 1917, before me personally came Henry M. Black, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[SEAL]

LINCOLN JONES,  
Notary Public, Kings Co. 10  
No. 3.  
Cert. filed in N. Y. Co.  
No. 8.

STATE OF NEW YORK,  
COUNTY OF NEW YORK, } ss.

On this 2d day of July, 1917, before me personally came Frank H. Bethell, to me known, who, being by me duly sworn, did depose and say that he resides in Scarsdale, Westchester County, N. Y.; that he is Vice-President of the New York Telephone Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. 20

[SEAL]

LINCOLN JONES,  
Notary Public, Kings Co.  
No. 3.  
Cert. filed in N. Y. Co.  
No. 8. 30

STATE OF NEW YORK,  
COUNTY OF NEW YORK, } ss.

On this 2d day of July, 1917, before me personally came Frank H. Bethell, to me known, who, being by me duly sworn, did depose and say that he resides in Scarsdale, Westchester County, N. Y.; that he is President of The Delaware and Atlantic Telegraph and Telephone Company, one of the corporations described



in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the Board of Directors of said corporation, and that he signed his name thereto by like orders.

[SEAL]

LINCOLN JONES,  
*Notary Public, Kings Co.*

*No. 3.*

*Cert. filed in N. Y. Co.*

*No. 8.*

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IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,

20

*Complainants,*

AND

HENRY M. BLACK, FARMERS'  
TELEPHONE COMPANY AND  
NEW YORK TELEPHONE COM-  
PANY,

*Defendants.*

} On Bill, etc.

ANSWER OF DEFENDANT FARMERS' TELE-  
PHONE COMPANY TO THIRD  
AMENDED BILL.

30

( Filed April 26, 1919. )

The defendant, Farmers' Telephone Company, answering the third amended bill of complaint, says:

I. This defendant admits that the complainants are stockholders of record of this defendant (Farmers' Telephone Company).

II. Paragraph 2 is admitted.

III. As to paragraph 3, this defendant admits that it (Farmers' Telephone Company) owns and operates



telephone lines and service in Burlington and Ocean counties in this State, having upwards of 1,220 miles of wireage, exchange offices and poleage, and that until June 29, 1917, it operated said lines under certain sub-license agreements and traffic letters (to which reference is hereby made) recited in the agreement dated June 29, 1917, between The Delaware and Atlantic Telegraph and Telephone Company, New York Telephone Company and this defendant (Farmers' Telephone Company), a copy of which said agreement of June 29, 1917, marked "Exhibit A," is attached to and made part of the third amended bill of complaint, and that except as modified by said agreement of June 29, 1917 ("Exhibit A"), it continued to and now maintains active operations on its said lines; that it is a going concern having fully 1,200 subscribers, and that its gross receipts for the year ending December 31, 1916, were \$31,568.25; that a United States cantonment called Camp Dix was established during 1917 and is now constructed and in operation at Wrightstown, Burlington County, within the territory operated by this defendant (Farmers' Telephone Company) up to June 29, 1917, and that this should have increased the business of this defendant had this defendant been able (which it avers it was not) to expend and had it expended the large sums of money required for the furnishing of adequate telephone service at said cantonment, but this defendant denies that this should or would have increased the net earnings or earning capacity of this defendant, and alleges that the business and earnings of this defendant did largely increase under and by reason of said agreement of June 29, 1917 ("Exhibit A"), and the operations thereunder; otherwise it denies said paragraph.

IV. Paragraph 4 is admitted.

V. Paragraph 5 is admitted.

VI. Paragraph 6 is denied, except that the execution, delivery and making of the hereinbefore referred to sub-license agreements and traffic letters is admitted.



VII. Paragraph 7 is admitted, except that this defendant (Farmers' Telephone Company) alleges on information and belief that the complainant, Pfeiffer, is only a nominal stockholder of record, and that the 5 shares standing in his name are still owned by the complainant, Keely, and were transferred of record by said Keely to said Pfeiffer without consideration and solely for the purpose of this suit, and that said complainant, Pfeiffer, is not the real party in interest.

10 VIII. Paragraph 8 is admitted.

IX. Paragraphs 9 and 10 are denied, except this defendant (Farmers' Telephone Company) admits and alleges that on June 29, 1917, the furnishing of adequate telephone service at said proposed United States army cantonment and environs, then about to be established at Wrightstown, required the construction of new and additional telephone lines, plant and equipment and the reconstruction of existing lines, which, with their maintenance and operation, would cost in excess  
20 of \$50,000, viz.: in the neighborhood of \$100,000 and upwards; that, in view of the fact that such cantonment was to be especially established to meet the necessities of the United States Government in the conduct of the war, and owing to the uncertainty of the continuance of such cantonment, this defendant (Farmers' Telephone Company) did not feel warranted in incurring the aforesaid expenditures; that said The Delaware and Atlantic Telegraph and Telephone Company and the New York Telephone Company were willing to,  
30 and at the behest of the United States Government did agree to, assume the furnishing of such service, and that said The Delaware and Atlantic Telegraph and Telephone Company, New York Telephone Company and this defendant (Farmers' Telephone Company) accordingly entered into the agreement, dated June 29, 1917, a copy of which, marked "Exhibit A," is attached to and made part of the third amended bill of complaint, and that said agreement ("Exhibit A") was duly authorized, ratified and approved by the board of directors of



this defendant (Farmers' Telephone Company); that under and by reason of said agreement of June 29, 1917 ("Exhibit A"), and the operations thereunder, the business and earnings of this defendant (Farmers' Telephone Company) did largely increase, and that said agreement was of great financial benefit to this defendant.

X. Paragraphs 11, 12, 13 and 14 are denied upon information and belief, except this defendant (Farmers' Telephone Company) admits upon information and belief the execution, delivery and making, by and between Henry M. Black, individually, the New York Telephone Company and The Delaware and Atlantic Telegraph and Telephone Company, of the agreement dated July 2, 1917, a copy of which, marked "Exhibit B," is attached to and made part of the third amended bill of complaint, to which reference is hereby made for its full tenor and effect, and this defendant admits that said Henry M. Black then was and now is the president of this defendant and one of its board of directors. **10**

XI. Paragraph 15 is denied, except this defendant (Farmers' Telephone Company) admits that the parties to said agreement of June 29, 1917 ("Exhibit A"), viz.: The Delaware and Atlantic Telegraph and Telephone Company, New York Telephone Company and this defendant (Farmers' Telephone Company) at once began to carry out the arrangements agreed upon by them in said agreement ("Exhibit A"), and that said agreement was presented to and ratified by the board of directors of this defendant at a meeting held on or about July 8, 1917, and except it denies any knowledge or information sufficient to form a belief as to whether the parties to said agreement of July 2, 1917 ("Exhibit B"), viz.: Henry M. Black, individually, the New York Telephone Company and The Delaware and Atlantic Telegraph and Telephone Company, at once began to carry out the arrangements agreed upon by them in said agreement ("Exhibit B"); this defendant (Farmers' Telephone Company) admits that certain of its **20**



liabilities were reduced and that it did not declare a dividend at the dividend period following June 29, 1917, and July 2, 1917, and alleges it did not then have any surplus or earnings available for the lawful declaration of a dividend.

XII. Paragraph 16 is admitted, except upon information and belief this defendant (Farmers' Telephone Company) denies that the directors of this defendant other than Henry M. Black and M. Warner Hargrove **10** did not on July 8, 1917, and do not now own any stock in this defendant.

XIII. This defendant (Farmers' Telephone Company) has no knowledge or information sufficient to form a belief as to the statements in paragraph 17, except that it admits on information and belief that said Henry M. Black has sold and assigned, and caused to be transferred on the books of this defendant to the New York Telephone Company 1,909 shares, of the par value of \$50 each, of this defendant, and except **20** it denies that such transaction was in fraud of the rights of this defendant (Farmers' Telephone Company), its stockholders and creditors or either or any of them.

XIV. This defendant (Farmers' Telephone Company) denies any knowledge or information sufficient to form a belief as to the statements contained in paragraph 18, except that it admits that its total capitalization is 2,000 shares of the par value of \$50 each.

XV. Paragraph 19 is admitted.

XVI. Paragraph 20 is denied, except this defendant **30** admits that the vote of the defendant, New York Telephone Company, on the shares of stock of this defendant (Farmers' Telephone Company) held by the New York Telephone Company will be necessary for the election of any new directors or officers of this defendant.

COLLINS & CORBIN,

*Solicitors for Defendant  
Farmers' Telephone Company.*



IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,  
*Complainants,*

AND

HENRY M. BLACK, FARMERS'  
TELEPHONE COMPANY AND  
NEW YORK TELEPHONE COM-  
PANY,

*Defendants.*

} On Bill, etc.

10

ANSWER OF DEFENDANT NEW YORK  
TELEPHONE COMPANY TO THIRD  
AMENDED BILL.

(Filed April 26th, 1919.)

The defendant, New York Telephone Company,  
answering the third amended bill of complaint, says:

20

I. This defendant has no knowledge or information  
sufficient to form a belief as to the statements in para-  
graph 1.

II. Paragraph 2 is admitted.

III. As to paragraph 3, this defendant admits that  
the Farmers' Telephone Company owns and operates  
telephone lines and service in Burlington and Ocean  
counties, New Jersey, having exchange offices and  
poleage; that it is a going concern with many sub-  
scribers; that a United States cantonment, called Camp  
Dix, was established during 1917 and is now constructed  
and in operation at Wrightstown, Burlington county,  
within territory until on or about June 29th, 1917,  
operated by the Farmers' Telephone Company under  
sub-license agreements and traffic letters (to which  
reference is hereby made), recited in the agreement  
dated June 29th, 1917, between The Delaware and

30



Atlantic Telegraph and Telephone Company, this defendant (New York Telephone Company) and Farmers' Telephone Company, a copy of which said agreement of June 29th, 1917, marked "Exhibit A," is attached to and made part of the third amended bill of complaint; but otherwise it has no knowledge or information sufficient to form a belief as to the statements in said paragraph, except that it is informed and believes that said Farmers' Telephone Company had no funds or

**10** moneys or means available for the expenditures necessary for the furnishing of adequate telephone service at said cantonment and environs, and that the business and earnings of the Farmers' Telephone Company did largely increase under and by reason of said agreement of June 29th, 1917 ("Exhibit A"), and the operations thereunder.

IV. Paragraph 4 is admitted.

V. Paragraph 5 is admitted.

VI. Paragraph 6 is denied, except that the execution,

**20** delivery and making of the hereinbefore referred to sublicense agreements and traffic letters is admitted.

VII. This defendant (New York Telephone Company) has no knowledge or information sufficient to form a belief as to the statements in paragraph 7, except that it admits that the total capitalization of the Farmers' Telephone Company is 2,000 shares of the par value of \$50 each.

VIII. Paragraph 8 is admitted.

IX. Paragraphs 9 and 10 are denied, except this de-

**30** fendant (New York Telephone Company) admits and alleges that on June 29th, 1917, the furnishing of adequate telephone service at said proposed United States army cantonment and environs, then about to be established at Wrightstown, required the construction of new and additional telephone lines, plant and equipment and the reconstruction of existing lines, which, with their maintenance and operation, would cost in excess of \$50,000, viz.: in the neighborhood of \$100,000 and upwards; that, in view of the fact that such canton-



ment was to be especially established to meet the necessities of the United States Government in the conduct of the war, and owing to the uncertainty of the continuance of such cantonment, the Farmers' Telephone Company did not feel warranted in incurring the aforesaid expenditures; that said The Delaware and Atlantic Telegraph and Telephone Company and the defendant (New York Telephone Company) were willing to, and at the behest of the United States Government did agree to, assume the furnishing of such service, and that said 10  
The Delaware and Atlantic Telegraph and Telephone Company, this defendant (New York Telephone Company) and Farmers' Telephone Company accordingly entered into the agreement, dated June 29th, 1917, a copy of which, marked "Exhibit A," is attached to and made part of the third amended bill of complaint, and that said agreement ("Exhibit A") was duly authorized, ratified and approved by the board of directors of the Farmers' Telephone Company; that under and by reason of said agreement of June 29th, 1917 ("Ex- 20  
hibit A"), and the operations thereunder, the business and earnings of the Farmers' Telephone Company did largely increase and that said agreement was of great financial benefit to the Farmers' Telephone Company.

X. Paragraphs 11, 12, 13 and 14 are denied, except this defendant (New York Telephone Company) admits the execution, delivery and making, by and between Henry M. Black, individually, this defendant (New York Telephone Company) and The Delaware and Atlantic Telegraph and Telephone Company, of the 30  
agreement, dated July 2d, 1917, a copy of which, marked "Exhibit B," is attached to and made part of the third amended bill of complaint, to which reference is hereby made for its full tenor and effect, and this defendant admits that it knew said Henry M. Black then to be the president of the Farmers' Telephone Company and one of the board of directors of said company.



XI. Paragraph 15 is denied, except this defendant (New York Telephone Company) admits that the parties to said agreement of June 29th, 1917 ("Exhibit A"), viz.: The Delaware and Atlantic Telegraph and Telephone Company, this defendant (New York Telephone Company) and Farmers' Telephone Company, at once began to carry out the arrangements agreed upon by them in said agreement ("Exhibit A"), and that said agreement was presented to and ratified by the  
10 board of directors of the Farmers' Telephone Company at a meeting held on or about July 8th, 1917, and except it denies any knowledge or information sufficient to form a belief as to what disclosures beyond the terms of said agreement of June 29th, 1917 ("Exhibit A"), were made at said meeting by Henry M. Black; it admits that the parties to said agreement of July 2d, 1917 ("Exhibit B"), viz.: Henry M. Black, individually, this defendant (New York Telephone Company) and The Delaware and Atlantic Telegraph and Tele-  
20 phone Company, at once began to carry out the arrangements agreed upon by them in said agreement ("Exhibit B"); it denies any knowledge or information sufficient to form a belief as to whether the liabilities of the Farmers' Telephone Company were reduced; it admits that the Farmers' Telephone Company did not declare a dividend at the dividend period following June 29th, 1917, and July 2d, 1917, and alleges, upon information and belief that said Farmers' Telephone Company did not then have any surplus or earnings available for the  
30 lawful declaration of a dividend.

XII. This defendant (New York Telephone Company) has no knowledge or information sufficient to form a belief as to the statements in paragraph 16.

XIII. This defendant (New York Telephone Company) has no knowledge or information sufficient to form a belief as to the statements in paragraph 17, except it admits that said Henry M. Black has sold to it at the price of \$65 per share, and that it has pur-



chased from him at said price 1,909 shares, of the par value of \$50 each, of the Farmers' Telephone Company, and except it denies that such purchase or payment, or any part of such purchase or payment was in fraud of the rights of the Farmers' Telephone Company, its stockholders and creditors or either or any of them, and alleges that the aforesaid agreement, a copy of which is attached to the third amended bill of complaint, marked "Exhibit B," has expired and is no longer in force or effect.

10

XIV. This defendant (New York Telephone Company) denies the statements contained in paragraph 18, except that it admits that the total capitalization of the Farmers' Telephone Company is 2,000 shares of the par value of \$50 each.

XV. Paragraph 19 is admitted.

XVI. Paragraph 20 is denied on information and belief, except that this defendant (New York Telephone Company) admits that the vote of this defendant on the shares of stock of the Farmers' Telephone Company 20 held by it will be necessary for the election of any new directors or officers of said company.

CARL M. ABROMETT,  
*Solicitor for Defendant,*  
*New York Telephone Company.*



## IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,*Complainants,*

AND

HENRY M. BLACK, FARMERS' TELE-  
PHONE COMPANY AND NEW YORK  
10 TELEPHONE COMPANY,*Defendants.*

} On Bill, &amp;c.

ANSWER OF DEFENDANT HENRY M. BLACK  
TO THIRD AMENDED BILL.*(Filed May 13, 1991.)*

The defendant, Henry M. Black, answering the third amended bill of complaint, says:

20 1. This defendant admits that the complainants are stockholders of record of the Farmers' Telephone Company.

2. He admits paragraph 2.

30 3. As to paragraph 3, this defendant admits that the Farmers' Telephone Company owns and operates a telephone line and service within the territory and of the mileage of wires and with the exchanges, offices and poleage described in paragraph 3 of the complaint, and that the Farmers' Telephone Company is a going concern, with approximately the number of subscribers and gross receipts for the year ending December 31, 1916, as set forth in said complaint; that a United States cantonment called Camp Dix was established and operated within the territory of the Farmers' Telephone Company, and that this should have largely increased the business of said company had it been able (which he avers it was not) to expend and had it expended the large sums of money required for the furnishing of adequate telephone service at said cantonment. This de-



defendant denies that this would have increased the net earnings or earning capacity of the Farmers' Telephone Company.

4. He admits paragraph 4.

5. He admits paragraph 5.

6. He denies paragraph 6, except that beginning with April 27, 1908, various agreements, sub-license agreements and traffic letters were entered into and agreed upon between the Delaware and Atlantic Telegraph and Telephone Company, the New York Telephone Company and the Farmers' Telephone Company, by which said territory operated by said Delaware and Atlantic Telegraph and Telephone Company, and the New York Telephone Company were sub-licensed to the Farmers' Telephone Company, and the connections between the lines of the several companies were established for the interchange of communications between the patrons of the several companies under conditions as fully set forth in said agreements, to which this defendant refers for their full tenor and effect. 10 20

7. He admits that complainant, Robert N. Keely, now owns seventy-five shares of the capital stock of the Farmers' Telephone Company, but denies that he has owned the same since the incorporation of said company. He denies that George Pfeiffer, Jr., owns five shares of the capital stock of said company, but avers that he is only a nominal stockholder of record, and that said five shares standing in his name on the record are still owned by the complainant, Robert N. Keely, and were transferred by said Keely to said Pfeiffer without any consideration and only for the purpose of this suit, and that the complainant, Keely, is the only party complainant in interest. He admits that the total capitalization of said corporation is 20,000 shares of the par value of fifty dollars. 30

8. He admits paragraph 8.

9. He denies that on or about June 1, 1917, the New York Telephone Company desired to become possessed



of and do business in that part of the territory of the Farmers' Telephone Company which included Camp Dix, and that through its officers and agents it approached this defendant for the purpose of acquiring the rights from the Farmers' Telephone Company, but avers that the Farmers' Telephone Company, being wholly unable to finance the construction and maintenance of an adequate telephone system to properly serve Camp Dix, desired to be relieved from the burden imposed thereby and from the embarrassment caused by its inability to raise from \$50,000 to \$100,000, the estimated cost of installing a proper telephone service, and that thereupon the said Delaware and Atlantic Telegraph and Telephone Company and the New York Telephone Company, at the request of the United States Government, did agree to assume the construction and operation of the telephone system at Camp Dix and vicinity and the agreements and traffic letters theretofore entered into between the said Delaware and Atlantic Telegraph and Telephone Company, the New York Telephone Company and the Farmers' Telephone Company were accordingly modified by the agreement dated June 29, 1917, a copy of which marked "Exhibit A," is attached to and made a part of the third amended bill of complaint, and that said agreement was duly authorized, ratified and approved by the Board of Directors of the Farmers' Telephone Company, and that under and by reason of said agreement and the operations thereunder the business and earnings of the Farmers' Telephone Company were largely increased and the embarrassing problem confronting the Farmers' Telephone Company was solved, and that said agreement was of great financial benefit to the said Farmers' Telephone Company.

10. He denies the 10th paragraph.

11. He denies the 11th paragraph.

12. He denies the 12th paragraph, except that he admits the execution by himself individually, and the New York Telephone Company, and the Delaware and At-



lantic Telegraph and Telephone Company of the agreement dated July 2, 1917, a copy of which marked "Exhibit B," is attached to and made a part of the third amended bill of complaint, to which reference is hereby made for its full tenor and effect.

13. He denies paragraph 13, and bases his denial upon the agreement referred to therein, dated July 2, 1917, and designated as "Exhibit B," in the third amended bill of complaint, which agreement speaks for itself and contains no such agreements as is alleged in paragraph 13 of the complaint, and is not in fraud of the rights of the Farmers' Telephone Company, its stockholders and creditors. 10

14. He denies paragraph 14, and avers that not only was the contract of June 29, 1917, not a secret contract, but was fully disclosed to, authorized, ratified and approved by the directors of the Farmers' Telephone Company.

15. He denies paragraph 15, except that he admits that the parties to the agreement of June 29, 1917, "Exhibit A," at once began to carry out the arrangements agreed upon by them in said agreement, "Exhibit A," and that said agreement was presented to and ratified by the Board of Directors of the Farmers' Telephone Company at a meeting held July 8, 1917, and he admits that the parties to the said agreement of July 2, 1917, "Exhibit B," at once began to carry out the arrangements agreed upon by them in said agreement, "Exhibit B," and he admits that certain of the liabilities of the Farmers' Telephone Company were reduced, and that it did not declare a dividend period following June 29, 1917, and July 2, 1917, and alleges that the failure to declare a dividend was not brought about through the influence of said defendant, Henry M. Black, but was due to the fact that the Farmers' Telephone Company did not then have any surplus earnings available for the lawful declaration of a dividend. 20 30

16. He denies paragraph 16.



17. As to paragraph 17, the defendant admits that portion of it which alleges that he was the owner of about eight hundred shares of the capital stock of the Farmers' Telephone Company, prior to June 1, 1917, and that he purchased from the various holders of stock in the Farmers' Telephone Company at fifty dollars per share until he had acquired a total of nineteen hundred and ten shares, and that he turned over and assigned to the New York Telephone Company
- 10   pany nineteen hundred and nine shares of the Farmers' Telephone Company at the price of fifty dollars per share and the additional sum of fifteen dollars per share, in accordance with the agreement of July 2, 1917, "Exhibit B," but he denies that there was any secret profit and that such sale and delivery of stock to the New York Telephone Company was in fraud of rights of the Farmers' Telephone Company, its stockholders and creditors, or either or any of them, and denies that the said sums of money received for said stock
- 20   was a secret gratuity or a bonus for the purpose of securing the agreement dated June 29, 1917, "Exhibit A," between the Farmers' Telephone Company and the New York Telephone Company, and alleges that the agreement marked "Exhibit B" has expired and is no longer in force or effect.

18. This defendant denies the statements contained in paragraph 18, except that he admits that the total capitalization of the Farmers' Telephone Company is two thousand shares of the par value of fifty dollars.

- 30   19. He admits paragraph 19.

20. He denies paragraph 20 of the complaint, except that he admits that the vote of the New York Telephone Company on the shares of stock of the Farmers' Telephone Company, held by it and the vote of defendant, Henry M. Black, will be necessary for the election of any new officers of said Farmers' Telephone Company.

HAROLD B. WELLS,

*Solicitor of defendant, Henry M. Black.*



Endorsed in Title:

Consent is herewith given to the filing of this answer as within time.

THOMAS P. CURLEY,  
*Solicitor of Complainants.*

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REPLICATIONS.

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Replications in usual form filed to answers of Defendants, Farmers' Telephone Company, New York Telephone Company and Henry M. Black.

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Docket 44-166.

IN CHANCERY OF NEW JERSEY.

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BETWEEN

ROBERT N. KEELY ET AL.,  
*Complainants,*

AND

THE FARMERS' TELEPHONE COMPANY, ET AL.,  
*Defendants.*

} On Bill, &c.,

TESTIMONY.

30

Testimony taken in the above-entitled cause, at the State House, Trenton, on Thursday, the twenty-seventh day of March, 1919, at 10:30 A. M.

Before Hon. John H. Backes, Vice-Chancellor.

Appearances—Martin V. Bergen, Esq., and Thomas P. Curley, Esq., for the complainants; Harold B. Wells, Esq., for the defendant Henry M. Black; Gilbert Collins, Esq., for the defendant The Farmers' Telephone Company; C. M. Abromeit, Esq., for the defendant New York Telephone Company.



*Robert N. Keely*, the above-named complainant, being duly sworn in behalf of the complainants, testified as follows:

Direct examination, by Mr. Bergen.

Q. What is your name?

A. Robert N. Keely.

Q. Where do you reside?

A. Brown's Mills.

Q. Are you the holder of any shares of stock in the  
10 Farmers' Telephone Company?

A. Yes, sir, 75.

Q. On that stock did you ever receive any dividends?

A. Yes, until, I think—I think the past two years.

Q. What was the amount of the dividends?

A. Six per cent. on a par of \$50.00.

Q. How long have you owned that stock?

A. Well, eight or ten years; I couldn't say; I remember the years soon after the company was formed, as to the exact date I don't know.

20 Q. Did you receive a dividend in 1918?

A. No.

Q. Did you receive these statements from the secretary of the company for the year 1918?

A. Yes.

Mr. Bergen—I offer these statements in evidence.

Mr. Collins—We object to the offer.

The Court—Objection overruled.

Said statements are marked "Exhibit C 1."

30 Mr. Bergen—The lead pencil marks on the side are made in my own handwriting on account of the very poor copy this is. They are, of course, not offered.

Q. Did you have a conversation with Mr. Black in your bungalow?

A. Yes.

Q. When was that?

A. I think it was last spring; I couldn't give you the accurate date of that.



Q. Was it after June 29, 1917?

A. Yes.

Q. Will you be kind enough to tell us what that conversation was?

Mr. Collins—If your Honor please, there are three different answers; may it be understood that if either counsel makes an objection, that it shall be made for all?

The Court—Yes, if you all object.

Mr. Collins—I object to this conversation with 10  
Mr. Black. (All counsel for defendants object.)

The Court—Objection overruled.

A. The object of Mr. Black's visit to call on me was to see what I would take for the stock, whether he could settle the matter with me, and I said that—I said, in a cheerful sort of way, I would take \$150.00 each for my share. He said that that was impossible; that it was holding him up, etc., and that is practically about the amount of the conversation; that otherwise the company would pay me nothing; there would be no dividends, etc. In other words, it would be advisable for me to go into this thing. But that came to no fixed amount, no solution, no settlement whatever. 20

Q. Did he make an offer to you then for this stock?

A. Practically of \$15.00 a share beyond the par.

Q. \$65.00 a share?

A. Yes.

Q. Was there any conversation with him in reference to what he was receiving as a profit from this deal? 30

A. As to what he was receiving?

Q. Yes.

A. I said that, at the rate of \$15.00 a share, would make it about \$30,000 that he was to get; he said it was nobody's business what he got; it was his own affair; and that was about the end of that part of the conversation.

Q. Did you have a conversation with Mr. Hargrove—who is he?



A. He is the director or manager of the company.

Q. Secretary of the company?

A. Secretary of the company.

Q. Who is Mr. Black?

A. President.

Q. And also a director?

A. I think so.

Q. Did you have a conversation with Mr. Hargrove in reference to this stock at or about that time?

10 A. Yes.

Q. What was that conversation?

Mr. Collins—That is objected to.

The Court—Objection sustained.

Q. Where did you hold that conversation?

A. The first conversation with Mr. Hargrove was held at Pemberton.

Q. When was that?

A. That is the first intimation I heard that Mr. Black had bought the stock and was about selling the company  
20 out; the exact date of that I couldn't tell you; it's a matter of a year or so ago.

Q. This was after 1917?

A. Yes, sir; whenever the date at the time; I have forgotten when it was; I have been away, but it was the first intimation I knew there was to be any change in the telephone company at all.

Q. What was that conversation?

Mr. Collins—That is objected to.

The Court—Objection sustained.

30 Q. Did you have a conversation with Mr. Black at Senator Wells' office?

A. Yes.

Q. What was said at that time; when was this?

A. This was, I think, last spring.

Q. What occurred there?

Mr. Wells—We object to that.

Mr. Collins—I object to it as irrelevant.

The Court—Objection overruled.



A. It was about the same thing, about settling the matter so that our suit would be discontinued, and we practically talked about how much would be satisfactory to me; I still maintained that I wanted \$150.00 a share, and Mr. Black said again that that was a hold-up game, and that practically was what the conversation was. The conversation was over without anything else developing in that line.

No cross-examination.

10

*George Pfeiffer, Jr.*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Direct examination, by Mr. Bergen.

Q. Are you a stockholder of the Farmers' Telephone Company?

A. Yes, sir.

Q. How many shares do you hold?

A. Five shares.

Q. Were you present at the conversation with Dr. Keely, which was held with Mr. Black, the President of that company, at Senator Wells' office? 20

A. Yes, sir.

Q. What was said at that time?

Mr. Collins—That is objected to as irrelevant to the issues against my clients.

The Court—Objection overruled.

A. Senator Wells had written Dr. Keely and myself to meet Mr. Black, and in this conversation we had with Mr. Black—in this conversation we had, Mr. Black wanted to persuade Dr. Keely and myself to sell this stock to him at par; he stated that the corporation could not possibly finance the new lines that would be required by the cantonment, and if they didn't sell, it would have to go into the hands of a receiver. The matter was talked over, and I finally said, "Mr. Black, what are you getting for your stock?" He said, "That is my affairs." "Well," I said, "these stockholders have all worked for this company, and as you are getting more than par 30



for this stock, you certainly ought to give to the stockholders what you are getting per share. That is the honest way to deal with a lot of friends who come into a corporation." Well, our conversation got pretty warm, and in that way, I believe, I stated that I understood he was getting \$25.00 a share more than he was trying to sell the stockholders; but he threatened that unless the stockholders sold this stock, that the company would have to go into the hands of a receiver; 10 they couldn't finance it. They had a board of directors' meeting at Wrightstown, I think it is, and they would not allow us into the board meeting.

Q. When was this?

A. The directors' meeting of the Farmers' Telephone Company.

Q. When was this meeting in Senator Wells' office?

A. I couldn't tell you the date of it; I have it in my diary.

Q. Was it 1918?

20 A. Yes, it was in the year 1918.

Q. When was the directors' meeting.

A. Prior to this meeting in Senator Wells' office.

Q. Was that in 1918, too?

A. Yes, Mr. Curley and I went up—

Q. What occurred?

30 A. That was the Governor's Day at Sea Girt; it was in August. I intended to go to Sea Girt, and I couldn't get away, because they wouldn't allow us to make a statement in the directors' meeting. We wanted to get a statement from the officers to find out just what condition this company was in. I understood—

Mr. Collins—That is objected to.

A. Well, I was told by the secretary of the company—

Mr. Collins—I object to that.

Q. Was Mr. Black present when this was told to you by the secretary?

A. No, he was not.



Q. Were you present at a conversation which was held in Dr. Keely's cabin or bengalow, at Brown's Mills, where Mr. Black was present?

Mr. Collins—It is objected to.

The Court—I think, under all the circumstances, the question may be admissible.

Q. Did you ask the secretary of the company at that time what the contract was, or what was being done—

Mr. Collins—I object to that.

The Court—Objection sustained.

10

Q. Where was this conversation?

A. This conversation was at Brown's Mills; I wanted to get the value of the corporation—

Mr. Collins—We object to that.

By the Court.

Q. Where was the secretary?

A. As I understand, in the telephone company's office at Brown's Mills.

Q. What was he doing there?

A. Well, he was attending to the telephone business and a number of other things he was interested in.

20

Q. Was he in charge of the telephone office at the time?

A. That's what I understand; it was in his office.

Q. What did you say to him?

A. I asked him what the Farmers' Telephone Company's statement showed; as a stockholder I wanted to find out what the value of this stock was; and he said, I think it was either \$126,000 or \$136,000; the value of the stock I think it was \$166,000, and then they took off for wear and tear, and that brought it down to \$136,000.

30

Mr. Collins—I move to strike out the testimony on the ground that it is not binding on my client and on Mr. Black.

The Court—Motion denied.



Q. Were you present at a conversation which was held at Dr. Keely's bungalow at Brown's Mills, where Mr. Black, the president of this company, was present?

A. Yes.

Q. When was that conversation?

A. It was on a Sunday, if my memory serves me right; I left my diary home. I was asked to come to Brown's Mills to meet Mr. Black, Mr. Reeves and Dr. Keely, to see whether some final settlement could not  
10 be made.

Q. What year was this?

A. 1918.

Q. Give us that conversation.

A. Mr. Black opened the conversation by saying that he didn't see why we should go into this lawsuit, and he would like to settle the question. I said to him, "Well, you certainly don't want the stockholders to take par for this stock when the books show \$126,000 of assets, or \$136,000 of assets; and then you are getting \$30,000." "Well," he said, "that's my business  
20 if I am getting \$30,000; I financed this company." I said, "All the stock you held in your family, I believe, was one-third of the stock, and the other two-thirds of the stockholders were the people who did the work," and they certainly were entitled, and Dr. Keely was ready to have each and every stockholder to receive just what he received per share; and he would stop the suit if he would agree to that; if he didn't agree to that, he didn't intend for him to take this \$30,000 from  
30 the stockholders unless he gave him a fight for it, and the Court would have to give it to him. Now, Black that day admitted that he was getting \$65.00 a share, as I had been informed by the secretary that that was what he was getting.

Cross-examination, by Mr. Abromeit.

Q. When you said that the value of the stock was \$136,000 or thereabouts, that has reference to all of the



2,000 shares of stock outstanding of the company, doesn't it?

A. As I understood from the secretary, that was what the value was that the Stockholders' Committee placed upon it.

Q. Was that the book value?

A. Yes.

Q. As to all the property of the company?

A. Yes, that was the 2,000 shares which represented \$100,000, and the \$36,000 represented the earnings 10 that had been placed into the company, less the deterioration, as I understood it was \$166,000 less \$30,000 deterioration, and for some plant they bought which they didn't use, a book value of \$136,000.

Q. With reference to the figure of \$65.00 per share of stock which Mr. Black sold, that had reference to the stock owned by Mr. Black that he was selling?

A. Well, not that I know of; he simply said he had a right to get whatever he could out of it.

Q. In that connection, you spoke of a figure of 20 \$65.00?

A. Yes.

By the Court.

Q. You understand he was getting \$65.00?

A. Yes, and he admitted he was getting \$65.00 that day, in the presence of Mr. Reeves, Dr. Keely and myself, as I had quite a conversation with him in regard to not treating the stockholders right.

30

Further cross-examination, by Mr. Wells.

Q. You say he admitted getting \$65.00, \$15.00 above par; didn't you say awhile ago that you accused him of getting \$65.00 a share, and that he replied to you that that was none of your business what he was getting?

A. Yes, at your house, and you were present.

Q. Why were you asking him at my house, which was after this suit was brought, what he was getting, if he had told you before?



A. He hadn't told me before; this was the last conversation I had with him when he admitted it.

Q. That was after the conversation at my office?

A. Yes, some time afterwards, and in the meantime it got noised around that he was getting \$65.00 a share; it had been talked of.

Q. Since when have you been a stockholder in the Farmers' Telephone Company?

A. A short time ago, just prior to this sale, I think  
10 it was.

Q. From whom did you get your stock?

A. Dr. Keely.

Q. Did you pay anything for it?

A. I offered him a check of \$250.00, and he wouldn't take it, and that check is ready for him at any time he wants it.

*M. Warner Hargrove*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:  
20

Direct examination, by Mr. Bergen.

Q. What is your name, Mr. Hargrove?

A. M. Warner Hargrove.

Q. Where do you reside?

A. Brown's Mills, New Jersey.

Q. Are you an officer of the Farmers' Telephone Company?

A. I am.

Q. What office?

A. Secretary and general manager.  
30

Q. How long have you occupied those positions?

A. Seventeen years, almost.

Q. Who is the president of that company?

A. Henry M. Black.

Q. That is a corporation?

A. Yes.

Q. Who is the treasurer?

A. J. M. Lamb.



Q. Could you name the board of directors of that company?

A. I can.

Q. Do so.

A. Henry M. Black, J. M. Lamb, George L. Shinn, Robert T. Woodward, George A. Woodward, Walter E. Borden, Pashley Malsbury, William H. Reeves, Walter T. Cox and myself, and W. A. Shreve was a director and resigned in September, about, 1918.

Q. Who were the directors of this company in the 10 year 1917?

A. The same names I have named.

Q. With Mr. Shreve?

A. With Mr. Shreve.

Q. And they were directors in 1916?

A. They were.

Q. Do you keep the stock books of this company?

A. I keep the stock records, Mr. Lamb keeps the stock books.

By the Court.

20

Q. The stock certificate book?

A. Mr. Lamb has that.

Q. How much stock did Mr. Black own in 1917?

A. I don't know; approximately, one-third.

Q. Make it June 1st, 1917?

A. (Looking at book) 505 shares, sir.

Q. How much stock did Mr. Black own October 26, 1917; can you tell me that? That is the date of filing the bill in this matter.

A. I think that is the correct number of shares.

30

Q. That same number?

A. I think so.

Q. Have you, as his agent, or for him, purchased any of the stock in the meantime from other stockholders from June to October, 1917?

A. Yes, sir, I have. From the first of June or the last of June?

Q. Any time through June to October 26, 1917.



A. Yes, I had, the last week in June; I thought you referred to stock in his own name; I had bought some for him the last week in June and along in July.

Q. How much did you pay the holders for that stock?

A. \$50.00.

Q. Par?

A. Yes.

Q. Can you tell me how many shares you bought, and from whom?

**10** A. Mr. Reeves and I got the stock together through our influence, and other friends; I think we got 593 shares additional together; I don't know how many he got, and how many I got; I got the total list here.

Q. How much did you pay for that stock?

A. \$50.00.

Q. During what period of time did you get that stock in?

A. I would say from the 20th of June until, perhaps, October.

**20** Q. 1917?

A. Yes.

Q. June, 1917—

A. Some shares might have gone a little later than that.

Q. That is the total that you and Mr. Reeves bought?

A. Yes; I can give you the exact number of shares.

Q. Who paid for that stock?

A. Mr. Lamb, the treasurer.

Q. Did you pay personally for that stock you got in?

**30** A. No, not all; the arrangement was that we was to purchase the stock, and Mr. Lamb should give his check for it. In a few instances, I think, the check was turned over to me, and I give it direct to the stockholders.

Q. On June 17, 1917, did you have a conversation with Mr. Black—June 16?

A. I think it was June 16, yes.

Q. Where was that conversation held?



A. At his home, Jobstown, New Jersey.

Q. Who else was present?

A. Mr. Reeves.

Q. What was that?

A. Mr. Black asked that I meet Mr. Reeves and bring him to his house, which I did in the evening. Either Mr. Black asked what I thought about selling out the company—I told him I wasn't favorable to it, and he said "Why?" I said because it was going along in good shape and paying dividends, and the camp was coming in our territory, and I thought it would be profitable for us to stay; and he said, "Well, I have already sold the stock and made a contract for it." I said, "If that is the case, there is nothing for me to do but to go with you, of course."

Q. What else did he say?

A. I asked him the price that he was getting for the stock, and he said it wasn't anybody's business what he got, but that he would give to Mr. Reeves and I \$5.00 a share as a bonus on the stock which we would get in for him; in other words, we were to help secure the stock, and he would give us \$5.00 a share as a bonus for our work; he argued that he and his relatives had about 800 shares of stock, and there would be 1,200 outstanding, and if we got that, that would be \$6,000; he would keep \$3,000 of that, and give me and Mr. Reeves \$1,500 for our trouble; he was also to assume the debts of the company to about \$9,000 in notes, and, perhaps, about \$2,000 outstanding debts, which he would pay off.

By the Court.

Q. You say he was to give you and Reeves a bonus of 5 per cent.?

A. \$5.00 per share.

Q. What do you mean, then, that you were only to get \$1,500?

A. There was 2,000 shares outstanding, 800 was belonging to himself and his friends; that



left 1,200, and that makes \$6,000, and he was to keep \$3,000 himself.

Q. He was not to give you \$5.00 a share?

A. Yes, on 300 shares, \$1,500. He stated also that he would give the board of directors \$5.00 a share as a bonus for their share, whatever their holdings were.

Q. At that conversation did he state to you anything about having made a contract for the Farmers' Telephone Company with the New York Telephone Company?

A. I think he used the words, "The deal is already made." He didn't say anything about a contract that I recall.

By the Court.

Q. What deal?

A. The deal that he had sold the stock of the company to the New York Telephone Company.

Q. What stock?

A. The stock of the Farmers' Telephone Company which he had and which we were to get in.

Q. Did he state the terms of that deal?

A. No, sir.

Q. What is the territory which the Farmers' Telephone Company has, roughly?

A. We control about 450 square miles of territory, part of Mercer, Monmouth, Ocean and Burlington counties, beginning at Crosswicks Creek, six miles south of Trenton, I believe it is, and extending to the Central Railroad below Chatsworth and Woodmansie.

Q. Was the Wrightstown cantonment built by the Government entirely within your territory?

A. It was.

Q. What was that cantonment?

A. The Wrightstown cantonment was set aside by the United States Government as a training ground for its troops, having at that time declared war on Germany and Austria.

Q. How many men did they have down there?



A. A maximum, I have understood, of 60,000.

Q. When was that started to be established there, that cantonment?

A. In June, 1917.

Q. Did your company have a contract with the New York Telephone Company and the Delaware and Atlantic Telephone Company, which gave you these as exclusive rights as far as that territory was concerned?

A. It did.

Q. Have you those contracts with you?

10

A. Copies of them.

Q. Where are the originals?

A. In the vault at Pemberton; I couldn't get them.

(Counsel do not object to an offer of the papers because they are copies.)

Mr. Bergen—I offer in evidence these copies.

(Counsel for the defendants produce copies of papers.)

Mr. Bergen—I offer in evidence these papers which counsel has produced.

20

Said papers, being three in number, agreements between the Delaware and Atlantic Telegraph and Telephone Company, and the Farmers' Telephone Company, dated November 1, 1909, August 2, 1910, and August 16, 1912, are marked "Exhibits C 2, C 3 and C 4," respectively.

Mr. Bergen—I also offer in evidence the contract between the Delaware and Atlantic Telephone Company, the New York and New Jersey Telephone and the Farmers' Telephone Company, dated July 29, 1908.

30

Said paper is marked "Exhibit C 5."

Mr. Abromeit—I will state that the New York and New Jersey Telephone Company has been consolidated with the New York Telephone Company.

Mr. Bergen—I also offer in evidence the traffic letters.



Said paper is marked "Exhibit C 6."

Mr. Bergen—Also, a contract dated June 29, 1917, between the Delaware and Atlantic Telegraph and Telephone Company, New York Telephone Company and the Farmers' Telephone Company.

Said paper is marked "Exhibit C 7."

Q. Did you sign this agreement of June 29, 1917, as secretary of the company?

10 A. No, sir.

Q. This agreement was made the 29th of June, 1917, and was executed by you as secretary?

A. No, sir.

Q. Had it ever been submitted to you before that?

A. No, sir.

Q. Had it ever been submitted to the board of directors before that?

A. No, sir.

Q. When did you first hear of that contract?

20 A. At a subsequent meeting of the board of directors, either in July or August.

Q. What action was taken then?

A. It was ratified by the board of directors.

Q. Did Mr. Black mention this contemplated agreement or arrangement with you in your conversation of June 16, 1917, with him?

A. I don't think so. I recall the only reference he made to a contract was a deal whereby he had sold the stock.

30 Q. Did you have a conversation with any of the Public Utilities Commission or their engineers with reference to the furnishing of the service to the Wrightstown cantonment?

A. I did.

Q. With whom and when?

A. President Donges and Major Betz, I think it was, who came into my office some time in the last week in June, perhaps the middle of June, and told me—

Mr. Collins—That is objected to.



Q. What was that conversation?

Mr. Collins—That is objected to as incompetent, irrelevant and immaterial.

The Court—The objection is overruled.

A. Mr. Donges told me that the Government was going to establish a cantonment at Wrightstown, and asked what position the Farmers' Telephone Company was in as to supplying telephone service.

Mr. Abromeit—I move to strike out the answer.

10

The Court—The motion is denied.

Q. What else?

A. I told him that it would depend upon how much service they required; if it would be a matter of a few hundred telephones, we could do it. He said, "We don't know ourselves how much will be required, but I would like to ask you, in case you got stuck, if you would be willing to let the Bell Company come in and help you?" I said I could speak for the company and say I believed they would, because our contract called for engineering assistance if so required.

20

Q. What else?

A. That is the substance of the conversation.

Mr. Collins—If your Honor please, I move to strike out the answer as incompetent, irrelevant and immaterial.

The Court—The motion will be denied.

Q. What arrangement did you, or did your company, make in reference to attempting to attend to the needs of this cantonment?

30

A. As soon as headquarters were being established for the cantonment I went over to Wrightstown and met Major Williams, who was Quartermaster, and asked him if I could do anything for him. He said, "You are the man I wanted to see." I entered into a contract with him for supplying telephone service.

Q. Written contract?

A. A written contract for the telephone service in the temporary headquarters, which service was installed.



Later, when they moved to headquarters in the center of the camp, at his request, in writing, I also established telephone service there. This obtained for a few days until I was informed that our service was not needed any longer; that the Bell had come in and had installed telephones. I went in and found our telephones disconnected and lying on the floor. I sent for and had them taken away. That's all I know about it.

Q. Did your company make any contracts with  
10 people for materials, for wires, telephones and poles, etc.?

A. Yes.

Q. What did you do?

A. Major Williams sent for me to come over, to come to headquarters and see him regarding service. I got Mr. George A. Woodward, who is my assistant manager, and secretary Mr. Lamb and went over and consulted with Major Williams and two other officers. We went down over to Signal Headquarters from New  
20 York to Staten Island, and they outlined to us what was needed and told us to order our materials; and, acting on the advice of my associates, I sent for the engineer of the Western Electric Company, who came down and looked over the plant, and I think we seen the same officers, and together we agreed on the material that was necessary; we were instructed to order the material so it would be ready at their needs, which we did. Later, the engineer of the Western Electric called me on the telephone and told me that the Bell Com-  
30 pany had told them we would not need the material; that they were going to take it for themselves.

By the Court.

Q. Who was this?

A. The sales manager of the Western Electric Company had told us they got orders from the Bell Company not to ship our material.

Further direct.

Q. Did you have a conversation with Mr. Black just subsequent to this time, and what was that?



A. Which one do you refer to?

Q. About these negotiations?

A. Yes.

Q. Tell us what it was.

A. I met Mr. Black the next morning after I had seen him at his home the night before, together with Mr. Lamb, Mr. Woodward and Mr. Reeves, regarding the purchase of this stock. It was then his idea to get out and get this stock in as rapidly as possible, and we attempted and did see some people; and the next conversation was on the Tuesday evening following. By arrangement, the Board of Directors, with the exception of one, met at Mr. George A. Woodward's house in Woodstown; some of the stockholders were there. At that time there was a general objection made as to the manner in which the deal—it was talked of; there was a general objection made as to how the deal had been talked of or consummated, and Mr. Black was told that we didn't think it was a fair deal; that he ought to have consulted with the stockholders. The contract was shown; he had them all called in, and the profits, if any, divided among the stockholders pro rata; and Mr. Black said it was nobody's damned business what he was getting for the stock. Everyone objected to coming there with the idea proposed by him, and it was then agreed that the deal should be called off, and that the company should be continued as heretofore, except Mr. Black should receive a salary as president, which he had never received before.

By the Court.

Q. When was that?

A. The Tuesday night before the Saturday night, whatever that would be, the 19th, I think.

Q. Of what?

A. June.

Q. Was there any mention made at that time of the company constructing at Wrightstown—

A. It was all talked over in general terms.



By the Court.

Q. Up to this meeting had you secured any of the stock?

A. No, I had not; we had attempted to secure some, but they made the objection it wasn't a fair deal.

Q. You persuaded them otherwise afterwards?

A. Yes.

10 Q. Did you state to the stockholders what the deal was that was not a fair deal?

A. Did I?

Q. Yes.

A. No, sir; do you mean at that meeting?

Q. Yes.

A. At that meeting it was talked over generally; I listened and I didn't—

Q. Did the directors know what Mr. Black was going to get?

20 A. No, sir.

Q. Did he ever disclose it to them?

A. No.

Mr. Abromeit—That is objected to.

Q. When did you first learn that Mr. Black had in contemplation a contract to give over your exclusive rights to Wrightstown cantonment?

A. I think when he presented this contract to the directors' meeting.

By the Court.

30 Q. In June?

A. In the July meeting.

Q. The same time it was ratified?

A. Yes.

Q. Was that contract ever ratified by a formal stockholders' meeting of the Farmers' Telephone Company?

A. No, sir.

By the Court.

Q. By the Board of Directors?

A. Yes, sir.



Q. Did your company hold a directors' meeting at which Mr. Black was present and was accused of making a profit on the stock; do you recall such an incident as that?

A. I think so, yes.

Q. When was that directors' meeting?

A. In September or October, 1918.

By the Court.

Q. '17 or '18?

A. '18.

16

Q. Where was it?

A. At my office at Brown's Mills.

Q. What occurred at that time?

Mr. Wells—We object to that.

Mr. Collins—And we do, on the ground that it is irrelevant to the issues here.

The Court—The objection is overruled.

A. Senator Shinn, one of our stockholders, asked Mr. Black what he was making, as I recall it, on the stock, and some remark was said, "Aren't you making \$30,000?" and Mr. Black said, "Who in the hell business is it if I am." Senator Shinn said this, he said, "It's my business; it is my business; I am a stockholder, according to my wealth, as much as yours, and I don't propose to let you sell my stock with a profit without protest."

20

By the Court.

Q. Did you succeed in getting Senator Shinn's stock at that time?

A. I did not; Mr. Black did.

30

Q. At that time did Mr. Black use any such expression as that he had held up the New York Telephone Company, or anything like that?

The Court—Let him tell what happened.

Q. What happened?

A. Nothing occurred at that meeting any more than what I have said, any more than a general quarrel resulted over the merits of the case. At one meeting be-



fore, I think at Mr. Woodward's house, Mr. Black made the statement that he considered it was a good deal, and that the Bell Company would have come in our territory and just taken it from us if he hadn't held him up on the deal some way. I am not clear what was said about that, but I think that was because they had a car at wire at Jobstown ready, and I think he took that as his cue, and went after it, after coming into our territory without leave.

10 Q. That occurred before the meeting of June 16?

A. No, sir, afterwards.

Q. When was this meeting?

A. On Tuesday night following June 16, I think that would be the 19th, 1917.

Q. Was there any other directors' meeting when this matter came up with Mr. Black?

A. I think it has been talked of at every directors' meeting since.

Q. Was there any meeting at which Mr. Black threatened the directors if they didn't sell their stock?

A. I heard Mr. Black say at the meeting that night at Mr. Woodward's house, that unless the directors sold their stock that he would depreciate it so that he would not let it pay another dividend by increasing his salary and other directors'. He addressed that to Mr. Shinn and Mr. Woodward, not to me.

Q. Did Mr. Black ever offer the directors \$5.00 a share in addition to par for their stock?

A. Yes.

80 Q. When was that, and where?

A. In September, at the September meeting of the Board of Directors at my office, and he produced checks for \$5.00 per share, offered to the directors, provided they would resign that day.

By the Court.

Q. What year?

A. 1918.

Q. Were your directors all stockholders?



A. They were.

Q. Did they resign?

A. No, some had resigned previous to that, so he informed us that day.

By the Court.

Q. Are your directors of to-day all stockholders?

A. Well, it is a legal point; Mr. Black took all the stock from them and gave them back one share signed in blank.

10

Q. When was that?

A. That was done in June or July, 1917, except mine; I held two shares of mine.

Q. In good faith?

A. Yes.

Q. At that September meeting did Mr. Black have any men there whom he wanted elected to that board?

A. He did.

Q. Who were they?

A. I was introduced to all of them; eleven men who were officials of the New York and the Delaware and Atlantic Telegraph and Telephone Company.

20

Q. What was done at that meeting?

A. Mr. Black offered all the directors \$5.00 a share on the stock which they had originally held, with the understanding that they would resign that day and let him elect these eleven directors. They wouldn't do it.

Q. And wouldn't take the money?

A. No, sir.

Q. Did Mr. Black ever state to you that he had agreed to put these New York men into the directorate of the Company?

30

Mr. Collins—That is objected to as leading.

A. No, sir.

Q. When did the company first pay a salary to Mr. Black?

A. At the July or August meeting in 1918, paid him for the year 1917, six months; six months for the year



1917 and six months for the year 1918, at \$150.00 a month.

Q. They never paid him a salary before that?

A. No.

By the Court.

Q. What did he do for that?

A. He attended the directors' meetings once a month and consulted with me occasionally; I suppose he attended about nine directors' meetings a year, which are held monthly, and consulted me about the workings of the company.

Q. Did the other directors consult you also?

A. They did.

Q. Did they get a salary?

A. One dollar per meeting and their dinner.

Q. Did Mr. Black do any service, such as managing that concern?

A. No, sir.

Q. Where is the stock at present?

20 A. I only know by hearsay.

Q. Do you know where that money came from by which Mr. Lamb paid for this stock?

A. Mr. Lamb told me Mr. Black gave it to him.

Q. Who owns the stock now in this company?

A. They were conveyed to the New York Telephone Company about two weeks ago.

By the Court.

Q. How many shares?

A. 1,900.

30

Mr. Collins—The New York Telephone Company owns all the stock except that owned by these two men.

By the Court.

Q. When you bought the stock, who did the stockholders convey to or assign to?

A. In blank.

Q. To Mr. Black?

A. In blank; they were all delivered to Mr. Black.

Q. Then what was done with it?



A. He held them until about two weeks ago, when he made a request, when they were all assigned to the New York Telephone Company and new stock issued.

Q. Did he ever tell you if he was buying that stock for someone, and who he was buying it for?

A. Yes.

Q. Who?

A. The New York Telephone Company.

Q. When did he tell you that?

A. In several conversations.

10

Q. Did he tell you in the conversation of June, 1917?

A. I think so.

By the Court.

Q. How many shares did you transfer?

A. 1900 shares, I think.

Mr. Collins—There are eleven shares in the names of the directors; 1,909 are held by the New York Telephone Company and 75 are held by the complainants.

Cross-examination, by Mr. Abromeit.

20

Q. When you speak of the surrender by the Farmers' Telephone Company of rights to the New York Telephone Company, do you mean under the supplemental agreement of June 29, 1917?

A. Yes.

Q. That is in evidence?

A. Yes.

Q. That supplements the other contracts which are now in evidence?

A. Yes.

30

Q. Were these original letters traffic and contracts ever acted upon or submitted to a meeting of the stockholders?

A. No.

Further cross-examination, by Mr. Wells.

Q. Who owned the shares of stock in July or August, 1918, owned a majority of the shares; you have a list of stockholders?



A. Yes.

Q. As of what date?

A. 1917, I have it here; 1918, also.

By the Court.

Q. Where is the one of 1918?

A. Here.

Q. And 1917 as well?

A. Yes.

10

Q. And the list that you have there is that a true list of the owners of the shares and the amount of their shares and addresses?

A. Yes, it is; I have no notification from the treasurer of the transfer two weeks ago.

By Mr. Abromeit.

Q. Those are the stockholders of record as of that date?

A. Yes, sir.

By the Court.

Q. What is that book?

20

A. My minute book.

Q. And in that you have the stockholders listed?

A. Yes.

Mr. Bergen—I offer the stockholders' list of 1917 and 1918.

Said list is marked "Exhibit C 8."

Q. You were the manager as well as the secretary of this company, and you still are, are you not?

A. I have so stated.

30

Q. And this Board of Directors is made up of the very best men in Burlington County?

A. Yes.

Q. That is correct?

A. Yes; and Monmouth and Ocean, too.

Q. And this traffic agreement and supplemental agreement of June 29, 1917, was approved and ratified by this board after a full discussion of the matter?

A. Yes.



Q. And the conversations that were held at the various meetings of the stockholders and directors were not aimed against this traffic agreement so much as against the fact that Mr. Black was going to make a profit out of the sale of the stock which he had purchased, to the New York Telephone Company; isn't that true?

A. It is.

Q. Was or was there not objection at any time from the Board of Directors or any stockholders against entering into a traffic arrangement or contract with the Bell Telephone Company, except in connection with Mr. Black's selling the stock at a profit? 10

A. That's it.

Q. There was no objection except that?

A. That is it.

Q. And the insistence that they should have a share of that profit? The Board thought they should have a share?

A. Yes. 20

Q. And the stockholders thought so?

A. Yes.

Q. Mr. Black didn't tell you he was buying up this stock for the New York Telephone Company; didn't he state he was buying it up to sell to the New York Telephone Company?

A. Yes.

Q. And he insisted at all the conversations had between the stockholders and Mr. Black, at which you were present, that it was none of their business what he paid for the stock or what he sold it for; isn't that true? 30

A. Yes, sir.

Q. In June, 1918, wasn't this same Board, including Mr. Black, re-elected?

A. Yes.

Q. And didn't Mr. Pfeiffer, one of the complainants, nominate this very Board; wasn't it at his nomination that this very Board was elected?



A. I think so; I think Mr. Black asked Mr. Pfeiffer if he would nominate him, and he did.

Q. You were purchasing this stock from the stockholders for Mr. Black?

A. Yes.

Q. Did you think when you were doing that, that you were practicing a fraud upon the stockholders?

Mr. Bergen—Objected to.

Mr. Wells—Question withdrawn.

**10** Q. Mr. Hargrove, through the administration of the affairs of this company was this Board dominated by Mr. Black and compelled to do things they didn't want to do in their own discretion?

A. Not to my knowledge.

Q. Then it wasn't ever, in any sense, a dummy board, was it?

A. No, sir.

Q. Did you get the \$1,500.00 that you were to receive?

**20** A. No, sir.

Q. You have never received that yet?

A. No, sir.

Q. The Farmers' Telephone Company's stock was owned by the people in that vicinity for the most part, wasn't it?

A. Yes.

Q. And not by any large interest outside?

A. Yes.

Q. And held, generally speaking, in small quantities?

**30** A. Yes.

Q. How many shares, exclusive of Mr. Black, did the directors themselves hold?

A. Perhaps four or five hundred.

Q. The directors themselves.

A. Yes.

Q. Who held the greater part of them?

A. Mr. Shinn, Mr. Reeves and myself.

By the Court.

Q. Take up your list.



A. I held 48 shares; my wife held 10; Dr. Keely held 80 shares.

Q. Was he a director?

A. No, sir. William H. Reeves held 71 shares; George L. Shinn held 80 shares; George A. Woodward held 20; J. M. Lamb held 20; W. E. Borden held 14; Walter Cox held 20; W. A. Shreve held 10, and Mr. Malsbury held 17; R. T. Woodward, 10.

Q. Now, Mr. Hargrove, these Board of Directors **10** were intimately connected or intimately acquainted with the affairs of this company?

A. Yes.

Q. They held their meetings and everything was discussed ordinarily?

A. Yes.

Q. And these men were right within the territory with the exception of Mr. Black?

A. Yes.

Q. Where did Mr. Black live?

**20**

A. His home is in Jobstown, where he spends his summers; his business is in New York.

Q. Eight months of the year he is in New York?

A. Yes.

Q. And these directors sold practically all of their stock, did they not, at \$50.00, and the \$5.00 bonus they were to get?

A. Yes.

Q. And you yourself and your wife sold at that price?

A. Yes, sir.

**30**

Q. Isn't it true that the apparatus of the Farmers' Telephone Company was of the old style and the kind you have to ring, the grinders; practically every 'phone you own is of the grinder type?

A. Yes, but that's not old style.

Q. Oh, that's a new style?

A. No, but up to two years ago the same apparatus was operating in Lakewood, New Jersey.



Q. Isn't it true that in the city of Bordentown, which is a city of four or five thousand people, that you have that system there?

A. Yes.

Q. And also throughout your entire plant?

A. Yes.

Q. And isn't it true that frequent requests have been made on the directors to put in a modern system?

A. No.

10 Q. And have you not been lacking in capital to do that?

A. No.

Q. Didn't you tell me that one of the storms that you recently had almost put your company out of business?

A. No; I told you that five years ago we had a storm that cost us ten thousand dollars to repair.

Q. And that it almost put you out of business?

A. No, that wouldn't put us out of business.

20 Q. And isn't it true that you have not sold any stock in any large quantities for years?

A. The whole capitalization has been sold.

Q. Has there been any market for the stock?

A. No, sir; none has been sold except occasionally at a death.

Q. What is the last price the stock sold at, the Farmers' Telephone Company?

A. Par.

Q. Did you ever know of any being sold at above par?

30 A. No, sir.

Q. The conversation you had with Major Williams at Camp Dix, when you installed the service at Camp Dix, was prior to the construction of the cantonment, was it not?

A. Yes, it was then being constructed.

Q. Wasn't he the man who came there to supervise the construction of Camp Dix?

A. Yes.



Q. And your service consisted of telephones over Mr. Smith's store?

A. And in the camp.

Q. There was no camp constructed at that time?

A. In the first instance, but we give them service there for perhaps thirty days.

Q. But during those thirty days there was no great service required except installing?

A. That is true.

Q. Was it not openly stated by the unanimous opinion 10  
of the Board of Directors that in view of the temporary nature of the camp, that it would not pay the Farmers' Telephone Company to take over the camp, Camp Dix, and install the service there?

A. Yes.

Q. That was stated by the directors and was the unanimous opinion?

A. Yes.

Q. Wasn't it estimated it would cost at least \$50,000 to do that? 20

A. Yes.

Q. And that after that could there much benefit come from Camp Dix to the Farmers' Telephone Company, in view of the fact the greater part of the service would be long-distance service, for which the Farmers' Telephone Company would get very little, if any, return.

A. I will admit that under our present arrangement, on which we received 5 per cent. the first year and 10 per cent. afterwards, it would be as good as the 15 per cent. we would have got it if we had installed our own ap- 30  
paratus under the previous agreement.

Q. It has a better interest on your money and is less inconvenient to the Telephone Company?

A. I think so.

Q. The Farmers' Telephone Company could not have done it, could they?

A. I think our credit would have been good for \$50,000. I took that matter up with the Major, and he



said, "As soon as these contracts are completed, you can borrow 80 per cent."

Q. Wasn't it true that the Government itself wanted the Bell system there so as to get its service?

A. I was never told that; I think it is true.

Q. What did you mean by saying that the present arrangement would be better than the 15 per cent.?

A. Under the old agreement the Farmers' Telephone Company received 15 per cent. of toll messages, up to

10 ten—

By the Court.

Q. Long distance?

A. Long distance; a mileage pro rata where we carried trunk. Under the new arrangement we received 5 per cent. the first year and 10 per cent. subsequently.

Q. Under the 15 per cent. rate you had to install?

A. Yes.

20

Q. And the other they installed?

A. Yes.

Q. Mr. Hargrove, isn't it true that a great deal of the difficulty between the trustees and the stockholders as against Mr. Black, which cropped up subsequently, was caused by the agitations of Mr. Keely and Mr. Pfeiffer going around among the stockholders?

A. I don't think so.

Q. Don't you know they did do that?

A. No.

30 Q. Didn't they come to you and protest that Mr. Black had bought their stock and was going to make some money on it?

A. Yes.

Q. And isn't it true that the only objection they had, Mr. Pfeiffer and Mr. Keely, was the fact that they couldn't get \$150.00 for their shares or \$250.00 per share?

A. I wouldn't put it as strong as that, Senator.



Q. Mr. Hargrove, was this matter brought—the matter of the transfer of the stock to the New York Telephone Company, brought to the attention of the Public Utility Commissioners?

A. Quite the contrary, No, sir.

Q. You never brought before the Public Utility Commission as the secretary, or never was present when this matter was discussed by the Public Utility Commission, and you yourself never appeared before the Commission as the secretary?

10

A. No, sir. I asked Mr. Black if it had; he told me it had. A little later, John Meirs, attorney-at-law of New Egypt, asked me to install a telephone in the environment of Wrightstown. I told him I couldn't do it, as we had a contract which would not permit me to do it. The Public Utilities wrote for an explanation after he wrote to them. They wrote back objecting very strongly to that answer, but there was nothing of the kind—

Q. Mr. Hargrove, I do not have reference to the traffic arrangement being approved of by the Public Utility Board, but I refer to the transfer of the stock of some 1,909 shares of stock to the New York Telephone Company, which was approved of by the Utility Board. I thought that was possibly what you were talking about.

20

A. The same answer will do. Mr. Black appeared before the Utility Board and asked for the transfer of stock without the consent of the Board of Directors. The first we knew about it, he brought a letter down to the Board saying that owing to his application the approval of the transfer of stock was granted; that action has never been ratified by the Board.

30

Redirect examination, by Mr. Bergen.

Q. Mr. Hargrove, you stated in your cross-examination here—you were asked a question whether the directors sold their stock for \$50.00 par plus \$5.00. Did they receive the five dollars?

A. No, sir.



Q. Did they sell for that, or what was the consideration for which they sold?

A. They sold for the \$50.00, with the understanding that they were to receive \$5.00 bonus from Mr. Black at some future time.

Q. Was it stated to them when that future time was?

A. No.

Q. Just left in the air that way?

A. Yes, sir.

10

By the Court.

Q. Give me the exact date of the confirmation of the contract of the date of June 29, 1917, marked "C 7."

A. On July 11, 1917.

Q. Read the minute.

20

A. "H. M. Black presented an agreement made by The Delaware & Atlantic Telegraph and Telephone Company, the New York Telephone Company and the Farmers' Telephone Company as a three-party agreement. All supplementary to various agreements and traffic letters now in existence and operation between the three companies enumerated and signed by F. H. Bethell, president and vice-president, respectively, of the Delaware and Atlantic Company and the New York Company, and H. M. Black, president of the Farmers' Telephone Company. Dated the 29th day of June, A. D. 1917, by which an agreement was made whereby the Delaware and Atlantic and the New York Company were permitted to reconstruct lines of the Farmers' Company and to give telephone service to a United States cantonment now in course of preparation at Wrightstown, New Jersey, giving the Farmers' Company certain toll percentages as a basis of enumeration." The action of the president in executing such an agreement was ratified.

30

Q. At that time had the directors sold their stock?



A. They had.

Q. Up to that time?

A. Yes, with the exception of one share.

Q. Then the Board of Directors who ratified that agreement was a dummy board, wasn't it?

A. Yes, we considered ourselves so; we thought we might as well do it anyhow; Mr. Black had all the stock.

Q. What date was that?

A. July 11.

10

Q. What year?

A. 1917.

Q. When was the transfer of the stock to Mr. Black made?

A. Mr. Lamb has the records.

Q. Don't you know whether the stock was transferred to Mr. Black or his relatives?

A. No, sir, the treasurer has that.

By the Court.

Q. Do you know when this agreement of June 20 29 was first negotiated by Mr. Black?

A. He told me on the night of June 16, or 17, at his house, that he already had made arrangements.

Q. When the stockholders transferred their stock at your solicitation, did they know of this agreement?

A. No, sir.

Q. Did they know of the negotiations between Mr. Black and the Bell Telephone system?

30

\*A. Mr. Black told me to tell the stockholders that he had now had an opportunity to sell the stock at par, and I could say it for him as president; that he thought best to sell, as the Bell Company was going to build this cantonment, and we weren't in a position to finance it, and we better get out while the getting was good.



Q. Did you so inform the stockholders you negotiated with and procured their stock?

A. Yes, sir.

Q. That he was going to get fifty?

A. I told them I didn't know what he was going to get.

Q. Didn't he tell you to tell them?

A. Yes; that he would give them par; they could turn their stock into Mr. Lamb—

10 Q. (Stenographer repeats the answer marked \*.) Did you say that?

A. Yes, sir.

Q. Did you tell the stockholders with whom you negotiated what Mr. Black said to you?

A. Yes; that he said to me that unless he got in the stock he would never let it pay another dividend, and I have sold this stock to my friends, and I thought the best thing to do was to sell, because you would never get any more dividends, and I would take my money while I could get it.

20

Q. Were any of these stockholders informed of Mr. Black's negotiations with the Bell system at the time they sold?

A. I don't recall that they were. It was generally known and noised about. What information was given, I am not able to say.

Recross examination, by Mr. Wells.

30 Q. When was this conversation you had with Mr. Black at which he said the company would never pay another dividend?

A. He said that at a meeting in Mr. George Woodward's house in Woodstown.

Q. When?

A. Tuesday night, June 19, 1917.

Q. And the company had during that time, had it not, Mr. Hargrove, in the month of June, declared their dividends for 1917?



A. For the first six months, I think.

Q. And isn't it true that you were so short in your finances at that very time that you had to sell treasury stock to meet your dividends, and that the directors had to take out \$2,400.00 worth?

A. That was true, in a way, because we insisted on selling stock to finance—we borrowed money on note rather than to sell stock for it.

Q. Taking that into consideration, you did sell treasury stock?

10

A. Yes.

Q. And asked the directors to take the treasury stock?

A. Yes.

Q. And Mr. Black then took half of it, did he not?

A. Yes.

By the Court—How much treasury stock was there?

A. He had already made a gargain with the Bell Company.

20

Q. But the rest of the directors had an opportunity of taking it?

A. Yes, but they didn't know of this deal.

Q. They would have taken it if they had known of the deal?

A. Yes, I would, I know.

By the Court.

Q. How was that treasury stock, what kind?

A. It was unsold.

Q. And was that all that was unsold, the \$2,400.00?

30

A. Yes, if that's the correct figure.

Q. Did I understand you to say in answer to the question submitted to you by the Chancellor that Mr. Black had instructed you to say to the owners of the stock that he was going to sell to the Bell Company, to the New York Telephone Company, their shares of stock for par? I didn't understand you.



A. No; I meant to say that Mr. Black told me to say to these stockholders that he had now an opportunity to unload the stock to the New York Telephone Company, and if they would bring their stock to Mr. Lamb, he would redeem it at par.

Q. You understood, Mr. Hargrove, all along, that Mr. Black was buying this stock, did you not; that he himself was buying this stock?

A. Yes.

10 Q. And you understood that he was going to get some profit, the amount of which was not known, for the sale of his stock?

A. Sure.

By the Court.

Q. At that time had Mr. Black already arranged with the Bell Company for the price he was to get; do you know?

A. No, I don't know.

Redirect examination, by Mr. Bergen.

20 Q. He told you that at the the meeting of June 16, did he not, that he had already sold the stock?

A. He said he had arranged with the company; he didn't say what price or how.

Q. But he had arranged with the company to buy the stock from him?

A. I so understood.

Q. And that he was to make a profit of \$5.00 a share?

30 A. The company then owed practically \$11,000 for money borrowed to erect new buildings and other things. Mr. Black said out of his profits he would pay that \$11,000, give the directors and our wives \$5.00 per share, and intimated he would have a profit for himself after that. Since that time the \$11,000 had been paid.

*George L. Shinn*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:



Direct examination, by Mr. Bergen.

Q. Are you a director of the Farmers' Telephone Company?

A. I am.

Q. Where do you reside?

A. New Egypt.

Q. For how many years have you been a director?

A. Ten or twelve years, I should think, or longer, perhaps.

Q. Do you own a share of stock in this company 10 now?

A. Yes.

Q. Will you be kind enough to explain to us how you own that stock?

A. Well, I feel that Mr. Black gave it to me in order that I should be a director in the company.

Q. When did you sell your stock to Mr. Black?

By the Court.

Q. Have you a certificate for the one share?

A. Yes, sir; I have a certificate, but it is 20 assigned in blank.

Q. Why?

A. Well, I take it for granted that any time Mr. Black wanted to take it, he would transfer it to whom he pleased.

Q. It is not yours, then, if he can go and take it?

A. It is pretty doubtful in my mind; I don't regard it hardly as mine; I haven't any money in it; it didn't cost me anything. 30

Q. How much stock did you hold in June, 1917?

A. 80 or 85 shares.

Q. When did you sell that stock?

A. Sometime in August or September, 1917, I think it was.

Q. To whom did you sell it?

A. Mr. H. M. Black.

Q. Will you state how, and when, and where that occurred?



A. At my house in New Egypt; my home.

Q. What occurred then?

A. Mr. Black had been to see me a short time previous, and asked me to sell my stock and sign a resignation. I told him I didn't care to resign at that time; I would rather do it when we were all present at a meeting; and after a little conversation along that line he left me and went to see some other directors.

Q. How much did he pay you for that stock?

10 A. \$50.00 per share.

Q. Did he mention anything about an additional sum of \$5.00 a share?

A. Yes; I was to receive \$5.00 a share, and my wife was to receive \$5.00 a share for what she had.

Q. When were you to receive that?

A. When he transferred the stock to the Bell Telephone Company.

Q. Weren't you to receive that when you resigned from the board?

20 A. Yes; that is, I would personally get mine.

Q. The \$5.00 a share which stood in your name and in your wife's name, you were to get when you resigned from the board?

A. Yes; Mr. Black, when he first got my stock, gave me a due bill, you might say; he took an option on my stock and my wife's stock for seven days.

Q. When was that?

A. In the summer of 1917.

By the Court.

80 Q. Have you the due bill?

A. No, I haven't; it was a sort of an agreement that if he sold the stock he would either pay me for it in seven days or return the stock, I think it was.

Q. What was the date of the directors' meeting when that contract was ratified?

The Court—The 8th of July.

Q. Prior to that time had you sold your stock to Mr. Black?



A. I think not; no, sir; I think it was later than July.

By the Court.

Q. Bearing in mind the meeting, was it before or after that meeting that you sold?

A. When was that contract confirmed; what meeting, July 8th?

Q. It is said the 8th of July?

A. I don't know; I can't answer that question.

Q. A previous witness said it was before What became of the option agreement?

10

A. I think I have it home.

Q. That would give the date?

A. Yes, sir.

Further direct.

Q. What was the conversation which occurred between you and Mr. Black at the time he purchased your stock?

A. Well, he came into my house and he opened his coat, and had some certificates of stock, and he said, "I have got Warner's and George's and one of Har-  
grove's, and I am here to take yours." I said, "If they  
have sold out, I might as well sell out, too"; so I got  
my stock and turned it over to Mr. Black.

20

Q. At that time, do you know whether he had their stock or not?

A. I have learned since he didn't have their stock.

Q. When did you first learn of this contract between the Farmers' and the New York Telephone Company of June 29, 1917?

30

A. At the time it was brought before the directors' meeting.

Q. That was the first?

A. Yes.

Q. Have you ever heard the terms of the contract under which Mr. Black was going to sell this stock to the New York Telephone Company?

A. No, sir.



Q. Did you ever make an offer to Mr. Black for a statement to him that you would raise the money and purchase this company?

A. Yes.

Q. Explain that conversation.

A. Well, that was at the meeting we held at Mr. Woodward's house—

The Court—What has that to do with the case?

10 Mr. Bergen—Merely to show that it has value. I will withdraw the question.

Q. On June 19, did Mr. Black make an offer to you for this stock—1917?

A. I think so, yes, sir.

Q. Will you be kind enough to tell us what that conversation was at that time?

A. That he would give par, which was \$50.00, and \$5.00 additional to the directors and \$5.00 to their wives for what shares they had.

20 By the Court.

Q. Was that at the time he took the option?

A. Yes.

Q. Then he took the option on June 19, 1917?

A. That was the first conversation that Black had with me.

By the Court.

Q. How do you fix the date?

A. I don't fix the date.

Q. You can't fix that date?

30 A. No, sir; I only fix the date as being in the summer of 1917.

By Mr. Collins.

Q. When did he pay for the stock?

A. Just a few days after I transferred it to him.

Q. You said August, didn't you?

A. I think, perhaps, it was; it was in the summer of 1917.



By the Court.

Q. When this contract was confirmed, were you then the holder of one share and a dummy director, or were you the holder of the 80 shares and an actual stockholder?

A. I was at that time a so-called dummy director; I think at that time he had an option to take my stock; I don't know but what he had even taken it.

Q. Now, do you recall the directors' meeting in Mr. Woodward's house? 10

A. Yes.

Q. What occurred at that meeting?

A. At that meeting it came out that Mr. Black—

Mr. Collins—That is objected to; there was no directors' meeting; it was a gathering of directors.

Q. At the meeting of the directors?

A. It was a meeting of the directors, not a directors' meeting. 20

Q. What was said at that time?

A. It came out that Mr. Black wanted to buy the stock and had a chance to sell it out.

Q. He was present at that time?

A. Yes.

Q. Was there any conversation as to whether he was getting a profit out of that stock?

A. Yes; that was brought out in the conversation that we believed he was going to get a profit.

Q. What occurred at that time? 30

A. After a good deal of conversation, it was practically decided to drop the whole thing. Mr. Black said as long as the directors didn't see fit to go along with the deal, we would just drop it and go along as before.

By the Court.

Q. When was that?

A. I think that was early in June.

Q. Is that the time that you asked him what he was getting out of it?



A. I guess I asked him that question at that time; I have asked him that question several times since.

Q. When was the directors' meeting at which you and Mr. Hargrove asked him whether he was not getting \$30,000?

A. That was a directors' meeting held sometime in the fall of 1918, say the September meeting of 1918.

Cross-examination, by Mr. Wells.

10 Q. On June 29, 1917, Senator, you had 80 shares, or thereabouts, of stock, did you?

A. I wouldn't be sure what date I had 80 shares.

Q. And didn't I understand you to say, that within four or five days after you entered into your contract for the sale of this stock, Mr. Black came along with a check and took the stock?

A. I think so, yes.

Q. So that what he did was to give you a due bill until he could give you a check?

20 A. Yes.

Q. Between the time that you agreed to sell the stock to him, and the time that he actually took it, there only intervened a few days?

A. About five days, I think.

Q. Now, you were intimately acquainted with the affairs of this company, were you not?

A. Yes.

Q. You were a regular attendant at the meetings of the Board of Directors?

30 A. Yes.

Q. And knew of their financial affairs?

A. Yes, sir.

Q. And you were perfectly satisfied to sell on your knowledge of the affairs of the company your stock at par and \$5.00 increase?

A. Not perfectly willing to.

Q. The only thing that induced you to sell was because somebody else was going to sell?



A. Was the threat that Mr. Black made to me that if I didn't sell he would see that the company didn't pay another dividend.

Q. When did that occur?

A. Several times in my presence to myself and other directors.

Q. When was the time that you have reference to, the specific threat he made?

A. Well, at a meeting of the directors at Mr. Woodward's house he made that threat that night.

10

Q. Give the words he used.

A. The words he used was that he would see that the company never paid another damned dividend.

Q. And that was in June?

A. I recall it as being June, 1917.

Q. What time do you have your regular meetings of the Board of Directors in June?

A. I think we meet the second Wednesday of each month.

Q. When he came to purchase your stock you testified he put his hand towards his pocket and said "I have here Warner's stock and George's stock, and I have come to get yours"?

20

A. Yes.

Q. And you replied that "If you got theirs, I might as well sell it"?

A. Yes.

Q. Wasn't that what induced you to sell?

A. That put me under the impression that he would have a majority of the company, and could do as he pleased.

30

Q. You understood that this stock was to be turned over by Mr. Black to the New York Telephone Company?

A. No.

Q. Did you think Mr. Black was buying it up for his own personal proposition so as to conduct the Farmers' Telephone Company himself?



A. No, quite the contrary.

Q. You knew he was going to sell out his stock to some other company, and he told you he expected to get a profit?

A. That was the supposition.

Q. No, but didn't he tell you he expected to get a profit?

A. I have heard him make that assertion.

Q. And didn't he at all the meetings at which the  
10 matter was discussed when various members of the board or stockholders tried to ascertain what profit he was to get, insist that it was none of their business?

A. He surely did.

Q. And once or twice with an oath?

A. Yes, sir.

Q. He made it emphatic?

A. Very emphatic.

Q. When did you actually transfer your stock?

A. I don't know.

20 Q. When did you get your money for the stock?

A. A day or two after I did transfer it.

Q. When you transferred it, it was in August or September, is that about the time?

A. I want to qualify that to say it was some time during the summer.

Recess until 2 o'clock.

After recess.

30 *Marcus Ward Newcomb*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Direct examination, by Mr. Bergen.

Q. What is your name?

A. Marcus Ward Newcomb.

Q. You are a practicing physician?

A. Yes, sir.

Q. Where are you now located?

A. At Brown's Mills, New Jersey.



Q. Are you in the army at the present time?

A. I am.

Q. At Camp Dix?

A. Yes.

Q. Were you present at a meeting in which a number of directors of the Farmers' Telephone Company were present in Mr. Woodward's house?

A. Yes; well, I was there at the gathering, but when they went in the house, Mr. Black wouldn't let me go in; they shut the door and kept me out on the porch.

10

Q. When was that, do you know?

A. Well, somewhere in June; I don't know the exact date; I think the date Mr. Hargrove said, June 19, was about right.

Q. What happened?

A. Mr. Hargrove told me about this sale that was contemplated; he said there was to be a meeting over there; and I asked him, and he said, "Yes; I got no authority to invite you, but I will talk to Mr. Black." I said I would like to talk to Mr. Black, and I went over there, and I asked him if I could ask him a few questions. He said, "Yes." We went on talking about the cantonment going to be established there. He spoke about that, and said we couldn't finance the operation, and I said, "Well, the Bell offered to come in and do the work and give us a certain percentage without any obligation to us." He said, "Well, that doesn't amount to anything." He said, "I am tired of financing this company; I want to sell it." I said "Would you take \$50.00 a share for your stock?" He said, "Yes, if you will buy the whole business." I said, "I can't"; and then after he said he wouldn't sell it unless he sold all, he said, "I wouldn't sell it unless I sold all my family control." And the rest of the members wanted me personally at the meeting, but he wouldn't have me in there, so they shut the door, and I stayed outside. When we left that night we considered that the deal was called off; that is, that the directors didn't care to take

20

30



it, and they had dropped the thing. The next thing I heard was Mr. Black had been going around nights and other times and had got a lot of the stock, and that he was still trying to get control of the stock. And then the whole thing started up again. I didn't sell at that time, and I called Mr. Black on the telephone, and I said, "I would like to ask you one question: how much money are you going to make off of this sale of stock at the expense of we stockholders?" He said, "That's  
10 none of your damned business." I said, "I think it is some of my business as a stockholder"; and he hung up the 'phone.

Q. When did you sell your stock?

A. After Mr. Hargrove and Mr. Shinn and Mr. Woodward sold theirs.

Q. How many did you sell?

A. Fifteen shares.

Q. What did you get for your stock?

A. \$50.00 a share.

20 Q. Through whom did you sell that stock?

A. Through Mr. Lamb, the treasurer; I took it over there and he gave me a check.

Cross-examination, by Mr. Collins.

Q. Is was for Mr. Black?

A. Oh, yes, but Mr. Lamb gave me a check for it.

By the Court.

Q. His check or the corporate check?

A. I think it was Mr. Lamb's check.

30

*Joshua M. Lamb*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Direct examination, by Mr. Bergen.

Q. What is your name?

A. Joshua M. Lamb.

Q. Where do you reside?

A. Cookstown, New Jersey.

Q. Are you an officer of the Farmers' Telephone Company?



A. Yes.

Q. What office?

A. I am treasurer and a director.

Q. How long have you occupied those two positions?

A. About eleven years.

Q. It has been testified to that there were various purchases of stock through the summer of 1917. Were there any transfers of this stock at that time?

A. The summer of 1917?

Q. Yes.

10

A. Yes, sir.

Q. What transfers of stock were there made at that time?

A. Well, there was a general transfer.

Q. Have you the stock books with you?

A. I don't think I brought the stock books. Yes, sir, I have the certificate books here, but in order to tell the transfer made, I would have to look through each certificate.

Q. Well, new stock would be issued for it?

20

A. Yes.

Q. Well, then, can't you tell; they would come in sequence, wouldn't they?

A. All the transfers were to Mr. Black.

Q. When were those transfers made?

A. The latter part of June and July. These shares of stock would come in to me—

By the Court.

Q. When did they start to come in to you?

A. I would hold them until I got enough to issue one or two or five hundred and then they would be issued in that block to Mr. Black.

Q. When was the first issue to Mr. Black; when was the first share issued to Mr. Black of this stock that came in after June 1st, 1917?

A. I think the first certificate was for 600 shares, June 30.

Q. When was the next?



A. That was transferred; I could give you a list of the names that was transferred to, if you want them.

By the Court.

Q. Issued to whom?

A. The 600 shares were issued to H. M. Black, transferred from various stockholders.

Q. Whose names are indorsed—

A. This is the list that makes up this certificate.

10 Mr. Bergen—I offer in evidence that certificate with that list, showing the names from whom it came.

Marked "Exhibit C 9."

Further direct.

Q. When is the next certificate?

A. On July 7, 400 shares.

By the Court.

Q. Issued to whom?

A. H. M. Black.

20 Q. And transferred from the parties whose names appear on the list attached to the stock and the number of shares?

A. Yes.

Q. And the number of shares?

A. Yes, sir.

Q. What are these stubs of certificate No. 339; what is that?

30 A. Certificate 339 is one share given to George L. Shinn, transferred from Thomas Hartshorn; that is a share of stock from Shinn to Thomas Hartshorn.

Q. Is that the certificate of stock which was given to Mr. Shinn to qualify him as a director?

A. I think not.

Q. Is there another certificate of one share in there to qualify Mr. Shinn as a director?

A. Certificate No. 340, given to Mr. Malsbury.

Q. That was issued July 2d?

A. Yes.



Q. Certificate 341 to George A. Woodward; was that to qualify him as a director, as you understand it?

A. Yes.

Q. And the same as to all?

A. Yes.

Q. 342; the stub of that certificate one share to J. M. Lamb, dated July 2, 1917, that was to qualify Mr. Lamb as a director?

A. Yes.

Q. That was the certificate to qualify him?

10

A. I think so.

Q. Certificate of Mr. Woodward and Mr. Malsbury and one to Mr. Hargrove, dated July 2, 1917, was that to qualify him?

A. I think so.

Q. Certificate No. 344, for one share to William H. Reeves, dated July 2, 1917; was that to qualify him?

A. I think so.

Q. 345, to Walter T. Cox, dated July 2, 1917; was that to qualify him?

20

A. I think so.

Q. And 346 to W. A. Shreve, dated July 2, 1917; was that to qualify him?

A. Yes, sir.

Q. Certificate No. 347 to H. M. Black for one share, dated July 2, 1917; why was that certificate issued?

A. He held enough stock in his own name to be a director, but I assume he wanted one share to be in his name to qualify him and leave him free to dispose of these other blocks as he chose.

30

Q. 348 for five shares, dated July 11, 1917, to George Pfeiffer; from whom was that transferred?

A. Robert M. Keely.

Q. When is the next certificate? Certificate 350 for five shares issued to Robert N. Keely?

A. Yes.

Q. Certificate to Hargrove, what is that?

A. That is a share that Mr. Hargrove holds at the present time, and he has paid for it with his own money.



Q. Certificate 352, 200 shares, issued to H. M. Black, July 16, 1917; is that some of this stock?

A. That was transferred to Mr. Black as per list.

Mr. Bergen—I offer in evidence the stock book.

Said book is marked "*Exhibit C 10*."

Q. Certificate 353, four shares issued to Asher B. Parker; what is this certificate?

A. That is a transfer from Asher B. Parker, to  
10 Asher B. Parker, who lost his original certificate and filed a bond.

Q. Certificate 354, 100 shares to Mr. Black, issued August 23, 1917; that stock, according to this list, transferred to him from these various holders according to that list?

A. Yes.

Q. 355 to H. M. Black, dated October 30, 1917, for 13 shares; is that from this stock?

A. That is from the list here. Hannah Emsen Wil-  
20 bur, one share, Lena May Budd, 10 shares; Bert Orvis, 2 shares.

Q. 356, for 100 shares to H. M. Black, dated March 4, 1918; is that from the names on the stub?

A. Yes; these are certificates—it was intended at the Board of Directors' meeting, on September 23d, at Brown's Mills—

Q. What year?

A. 1918, for each of the directors to resign, and these certificates were drawn for the directors to be  
30 elected in their place.

Q. Then, these certificates which are in the book are drawn in the names of these various men of those two telephone companies?

A. Who were to be elected to the board if the present board had resigned on September 23d.

Q. These certificates have never been issued?

A. No, sir; here is a certificate of stock, it has been cancelled, but I suppose that Mr. Black has paid for it, and it really belongs to him. At that meeting we can-



celled W. A. Shreve's certificate, the first one; it was going to be issued to Stevens, but it is cancelled and has been in the book ever since.

Q. Mr. Shreve did resign at that time?

A. I think he resigned before that meeting.

Q. Did the board at that meeting elect Mr. H. S. Stevens—

A. No, sir.

Q. They have never filled the vacancy created by the resignation of Mr. Shreve?

**10**

A. No, sir.

Q. Certificate No. 369 is for how many shares?

A. 1,900 shares.

Q. To whom?

A. Issued to the New York Telephone Company, transferred from H. M. Black.

Q. Dated when?

A. March 11, 1919.

Q. That certificate has been issued?

A. Yes, sir.

**20**

Q. What is certificate No. 370?

A. Eight shares issued to the New York Telephone Company March 11, 1919, transferred from H. M. Black.

Q. That is 1,908 shares; do they own another share of stock?

A. No, sir.

Q. These various holders of stock in their selling of that stock to Mr. Black, turned that stock in to you, did they not?

**30**

A. Yes, a part of them; I think I paid out \$30,400.

Q. Where did you get that money?

A. From Mr. Black, one check of \$10,000, another check of \$10,000, one check of \$200.00, and another check of \$200.00.

Q. Did he ever tell you where he got that money?

A. He did not.

Q. Or where that money came from?



A. No.

Q. Did he ever tell you who was the eventual purchaser of this stock?

A. No, sir.

Q. You said there were two \$10,000 checks?

A. There were three \$10,000 checks.

Q. When was that money given to you?

A. Well, it began, the first check I drew for stock was July 5, 1917.

10 Q. When did you get your first money from Mr. Black?

A. Two or three days, probably, before that, previous to July 5.

Q. How much was that check?

A. Ten thousand.

By the Court.

Q. What did you do with it?

20 A. I deposited it in the People's National Bank of Pemberton to the account of J. M. Lamb, special account, kept free from the company's account; I used a separate check book in drawing the checks.

Q. June 1st, 1917, what was the state of the finances of the Farmers' Telephone Company; how much money did they owe?

A. Well, practically \$10,000.

Q. Did Mr. Black ever pay that debt off for the company?

A. No, sir, the company paid it off.

30 Q. Did Mr. Black ever assume that debt?

A. No, sir.

Q. It was paid off out of the funds of the company?

A. Yes, sir.

Q. On that date did you have any surplus in the treasury of the company?

A. You mean cash?

Q. Yes, or accounts receivable, or investments of any kind?



A. (Looking at book.) July 1, 1917, cash on hand \$230.83. Accounts receivable were in round figures \$5,000.

By the Court.

Q. Consisting of what?

A. Accounts due from subscribers for telephone service.

Q. What was your gross annual income, approximately?

A. About forty thousand.

10

Q. Did it come up to forty thousand?

A. Approximately forty thousand.

By Mr. Collins.

Q. What year?

A. 1917.

Q. At that time your accounts receivable were about \$5,000. What other figure did you state, cash \$200?

A. \$230.

Q. Where did you get the \$11,000 to pay off that debt?

20

A. Bills payable about \$2,000, and outstanding notes for \$9,000. Did I understand the question? Oh, I misunderstood the question. Why, it was paid out of the earnings of the company since that time; since June 1, 1917, we have paid all the notes off.

Q. Is it not a fact that practically all your net profits were distributed by you year after year as dividends?

A. Not all; there was a portion used in the business.

Q. Well, your net profits after paying the expenditures of your business, did you lay aside any surplus year after year?

30

A. Not a cash surplus.

By the Court.

Q. What surplus did you lay aside?

A. Our surplus we used in the business, instead of issuing stocks or bonding the company. We have a surplus to-day carried on the books of something like \$49,000. Part of that was earned and part of it was not earned.



Q. How was it created?

A. About \$23,000 of it is an earned surplus, created from the earnings.

Q. Where is it?

A. It is used in the business, used in constructing the plant, and there was \$26,000, approximately, is the difference between the value of the plant as carried on the books of the company and the inventory made by the company, that is, the inventory amounted to about \$51,000 more than what the value we was carrying on our books was. The Board of Directors ordered \$20,000 of that canceled as depreciation; \$5,000 they ordered set aside as an accident reserve, and the balance was transferred to surplus.

Q. Only book values?

A. Book values, yes. This was the inventory value.

Q. When did you sell your stock?

20 A. Prior to July 5, 1917.

Q. How much money did you get for it?

A. \$50.00 per share, par value.

Q. Was there any agreement to pay you an extra \$5.00 in reference to it?

A. Yes, I was to get a bonus of \$5.00 a share.

Q. When were to to get that bonus?

A. When Mr. Black had secured the rest of the stock, as I understood it.

30 Q. Was it coupled up in any way with your resignation from the Board of Directors?

A. No, I don't think so, although at the meeting of September 23, 1918, the Board of Directors were offered their bonus of \$5.00 a share if they would resign at that meeting.

Q. Did you resign?

A. I did not.

Q. Have you ever got your \$5.00?

A. No, sir.

Q. Did any of the board resign except Mr. Shreve?



A. No, sir; not that I know of.

By the Court.

Q. Have you any stock now?

A. One share.

Q. Is it yours?

A. I haven't any money in it.

Q. Are you the owner of it?

A. Yes, I have it in my custody.

Q. Are you the owner of it, not the possession? 10

A. I don't know what you would call would constitute ownership; I haven't any money in the share.

Q. Who gave you that share?

A. Mr. Black.

Q. What did he give it to you?

A. In order to act as a director.

By the Court.

Q. Is it subject to his demand?

A. Yes, sir. 20

Q. You assigned it in blank?

A. Yes.

Q. Were you present at the meeting of the members of the board at Mr. Woodward's house on June 19, 1917?

A. Yes, sir.

Q. What occurred at that time?

A. Well, the proposition was brought up for getting in the stock and selling the company out; that is, Mr. Black's proposition; the members of the board who were there did not think well of the proposition; they thought that the company had been paying dividends ever since they started, and had created a little surplus, and that we could manage the business profitably and run it on in the future. 30

Q. Did Mr. Black make any reference to having held up the company at that time?

A. I don't remember.



Q. You didn't hear any such thing?

A. No, sir.

Q. Did Mr. Black at that time threaten in any way the gentlemen present if they did not sell their stock?

A. He threatened that he would not allow the company, being a majority stockholder, he would not allow the company to pay any more dividends, and he would depreciate the value of the stock so it would go below par.

10 Q. Did you at that time know anything about whether the company had agreed, or whether it was in contemplation that the company should agree with the New York Company to give up its rights in the Wrightstown Camp to that company?

Mr. Bergen—(Question withdrawn.)

Cross-examination, by Mr. Wells.

Q. Would you tell the Court why at this meeting of September, 1918, the directors did not resign as they  
20 agreed to do?

A. It was because we understood that Mr. Black had made an agreement with Mr. Hargrove that had not been fulfilled, and we refused to resign until he settled with Mr. Hargrove.

Q. So that your refusal to resign had nothing to do with your considering the traffic agreement entered into between the Farmers' Telephone Company and the New York Telephone Company, as being to the advantage or not of the company?

30 A. No; I think we all would resign on September 23 if Mr. Black had paid the \$1,500 which Mr. Hargrove said he owed him, and paid the directors and their wives the five dollars.

Q. At this meeting the representatives of the New York Telephone Company came down to qualify as the new directors?

A. They didn't tell me, but that was my supposition they were there.



*George A. Woodward*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Direct examination, by Mr. Bergen.

Q. What is your name?

A. George A. Woodward.

Q. Are you a director of the Farmers' Telephone Company?

A. I am.

Q. How much stock did you own on June 1, 1917? 10

A. 20 shares at that time.

Q. How much stock do you own now?

A. One share; I have got one share, I might say.

Q. When did you sell your 20 shares?

A. Why, right after June 1st, about June 4th or 5th.

Q. 1917?

A. Yes, sir.

Q. From whom did you receive that one share?

A. Mr. Black.

Q. What was that given to you for? 20

A. To continue on as a director.

Q. Do you own that stock?

A. I don't know; I have it in my possession.

Q. Did you pay anything for it?

A. No.

Q. When are you to give it back to Mr. Black?

A. I don't know.

Q. On demand from him?

A. I suppose so.

Q. You would give it back without any further consideration coming to you for it? 30

A. I think so, if necessary.

Q. Did you ever hear of \$5.00 extra being paid you for that 20 shares; how much did you sell the 20 shares for?

A. \$50.00 par.

Q. Each share?

A. Yes.



Q. Did you hear anything about a \$5.00 extra bonus coming to you?

A. Yes, there was some talk of that.

Q. What was that to come to you for?

A. Well, I don't know; on account of bonus or good will.

Q. When was it to be paid to you?

A. I don't know that that was stated just when it was to be paid?

**10** Q. Was it ever offered to you?

A. Yes, sir.

Q. When?

A. At a directors' meeting at the time the New York people called there to be made directors.

Q. What was it offered to you for at that time?

A. Well, Mr. Black wished us to resign, and he offered to me if I would resign at that time, he would make a settlement with me.

Q. Did you resign at that time?

**20** A. No.

Q. Why didn't you resign?

A. Well, there were some things that Mr. Black hadn't done in making settlements with others.

Q. When you sold your stock, did you know anything about what he was receiving for that stock?

A. No, I didn't.

Q. Did he state to you that he had already a contract to sell the stock?

A. He gave us to understand it would go over to the  
**30** Bell Telephone Company eventually.

Q. Did you know that the Bell Telephone Company had made a contract by which they took back the exclusive rights in the Wrightstown encampment?

A. No, I did not at that time.

Q. Were you present at a meeting of the directors when Mr. Shinn accused Mr. Black of making a profit of \$30,000?

A. Yes.

Q. When was that meeting?



A. I think that was a meeting of the directors.

Q. When was it, do you know?

A. During 1918; I don't know just what time.

Q. What occurred at that time?

A. Like we often do, got into a discussion, or the question came up; someone made the remark to Mr. Black that they thought he was making about \$30,000, and he said it was nobody's damned business if he did, and Senator Shinn said he thought it was his business, being a stockholder and so on.

10

Q. Mr. Shinn didn't say he owned stock at that time?

A. No, not at that time.

Q. Were you present when Mr. Black made a statement that he had held up the New York Company, or some such similar statement?

A. I don't think I was. I heard some talk of that kind, but I don't recall Mr. Black making that statement in my presence.

Cross-examination, by Mr. Wells.

20

Q. You knew of the ratification of this traffic agreement?

A. Yes, sir.

Q. And you were present when it was ratified?

A. Yes.

Q. And you approved of that ratification of that traffic agreement?

A. Sure, yes.

*Robert T. Woodward*, a witness produced on behalf of the complainants, being duly sworn, testified as follows: 30

Direct examination, by Mr. Bergen.

Q. What is your name?

A. Robert T. Woodward.

Q. Where do you reside?

A. Cream Ridge, New Jersey.

Q. On June 1, 1917, did you own stock of the Farmers' Telephone Company?



A. Yes.

Q. When did you sell that stock?

A. I don't remember; somewhere about the first of July.

Q. Are you a director of that Company to-day?

A. I am supposed to be.

Q. Did you sell all of your stock?

A. Yes.

Q. How much did you get for it?

10 A. Fifty dollars a share.

Q. Did you hear anything about a \$5.00 additional sum to be paid to you for that stock?

A. Yes.

Q. What was that to be paid to you for?

A. Mr. Black had told it that—

By the Court.

Q. Did he tell it to you?

A. No, I think he said it in public.

Q. Were you there?

20 A. Yes; and to help get these notes paid when we were all there, he would give us \$5.00 a share when we were through.

Q. The notes?

A. Yes, sir; I told him I would never accept it; I didn't ever expect to.

Q. How many shares did you own?

A. Ten.

Q. How many is in your name now?

A. One.

30 Q. Who gave you that share?

A. It came from Mr. Lamb; Mr. Black ordered him to send it to me, I suppose.

Q. Where is the certificate?

A. Home in my safe.

Q. When did you agree to give that certificate back?

A. When we were through with the business and when I was through as a director, I suppose; I don't know that there is any agreement particularly.



By the Court.

Q. It is signed in blank?

A. Yes, sir.

No cross-examination.

*William H. Reeves*, a witness produced on behalf of the complainant, being duly sworn testified as follows:

Direct examination, by Mr. Curley.

Q. Where do you reside?

A. New Lisbon, New Jersey.

10

Q. Are you a director of the Farmers' Telephone Company?

A. Yes, sir.

Q. Are you a stockholder?

A. Yes.

Q. What ownership of stock do you possess?

A. There is one share of stock in my name now.

Q. Were you solicited by Mr. Black to go out among the stockholders to procure their stock?

A. Yes.

20

Q. When was that?

A. That was on Saturday night, I think, June 17; I am not positive, but that was the very first transaction Mr. Hargrove and I was called over to Mr. Black's home.

Q. What year?

A. 1917.

Q. What did Mr. Black say to you?

A. He told us of the offer he had to purchase; we had been trying to sell it for over two years.

30

Q. What did he say?

A. He wanted us to help and assist in securing stock.

Q. Did he mention who had offered to buy that stock?

A. No.

Q. What language did he use when he told you of the offer?

A. He made that offer to us—

Q. What did he say?



A. If Mr. Hargrove and I would assist him in securing this stock he would give us \$5.00 per share for our work of assistance.

By the Court.

Q. For every share you succeeded in buying?

A. Yes, sir, above the \$50.00 par.

Q. How many shares did he authorize you to go out and secure?

A. It wasn't specified.

10 Q. How many shares did he talk of?

A. I don't remember of any limit being put on.

Q. How many shares did he say he controlled himself at that time?

A. I don't remember that.

Q. Was there any mention of 1,200 shares to be bought by you and Mr. Hargrove?

A. I wouldn't specify particularly.

Q. How many did he say you would offer to pay the stockholders for their stock?

20 A. How much?

Q. Yes.

A. Fifty dollars.

Q. How was that to be paid?

A. I bought a number of shares myself, fifteen or twenty thousand dollars, and paid for it myself, and turned it over to Mr. Lamb.

Q. You paid for it by your own individual check?

A. Yes.

Q. Who paid you?

30 A. Mr. Lamb; some went to Mr. Black.

By the Court.

Q. Who reimbursed you?

A. Some went to direct Mr. Black and some to Mr. Lamb.

Q. How much did Mr. Lamb give you?

A. \$50.00 a share.

Q. How much in money?

A. He has never given me any.



Q. Did you ever get paid for the money you put up?

A. \$50.00 a share.

Q. Who paid you for that?

A. Lamb and Black.

Q. Now, Mr. Reeves, you say you bought fifteen or twenty thousand dollars' worth of stock?

A. Yes, of my own money.

Q. And then you turned that stock over to Mr. Lamb?

A. Yes.

10

Q. And then in turn Mr. Lamb paid you for the stock?

A. He did.

Q. What agreement, outside of the five dollars a share was there, if any, between you and Mr. Black?

A. None other.

Q. Have you been paid \$5.00 a share?

A. No.

Q. You hold how many shares now?

A. One.

20

Q. Are you the owner of that share?

A. Only in name.

Q. You have no money in that share?

A. Not directly.

Q. Were you present at any meeting, not of a called meeting of the directors, but at a meeting of directors at Mr. Woodward's house—

A. No.

What other meeting did you have with Mr. Hargrove and Mr. Black?

30

A. I have been present at all the directors' meetings.

Q. Did Mr. Black ever make any statement to you as to where this stock was going?

A. No, I knew without it.

Q. Where was it going?

A. To the New York Telephone Company; I heard a telephone conversation, and that's the way I knew that.



Q. Did you ever know how much they gave Black for the stock?

A. Not positively.

Q. Do you remember the meeting of June 16th or 17th, 1917, a meeting of the Board of Directors?

A. There was no meeting that day.

Q. When you met at that time—what time did you sell out your stock to Mr. Black?

A. On the first of July, 1917; that is, after the 5th or 7th, or somewhere along there, or the 10th.

Q. At what time was this matter brought out before the Board of Directors; the agreement between the New York Telephone Company—

The Court—July 8th.

Q. And you voted upon that measure?

A. I did, yes.

Q. At that time you were the then owner of one share of stock?

A. No, I was owner of seventy some shares of stock at that time. At the meeting of July 8th?

Q. Yes.

A. No, a transfer had been made near that time; I think I had a lot of shares, but not in my name at that time; at the time of the meeting I held a number of shares.

Q. Then, at that meeting on July 8, when you confirmed the agreement between the New York Telephone Company and the Farmers' Telephone Company, you had no interest in the corporation at all, had you, no financial interest?

A. No, no financial interest, only my duty.

Q. Your financial interest only consisted of one share of stock?

A. I wouldn't stop at that.

Q. Your financial interest?

A. Yes.

Q. Where was this meeting of June 16, 1917, held?

A. June 16, I think at Mr. Black's home, Jobstown.

Q. Who was present?



A. Mr. Hargrove and myself.

Q. Who else?

A. His family, but they didn't participate in the meeting.

Q. What was the discussion there then?

A. He called us together to inform us of the offer or chance of sale.

Q. What did he say?

A. My former question covers that.

Q. At that meeting did he tell you that he had entered into an agreement with the New York Telephone Company to give up the exclusive rights of the Farmers' Telephone Company at Wrightstown? 10

A. No; that had been brought before the directors before that, I think; the executive committee was informed of the working of that all the time, and worked together.

Q. What do you mean?

A. They were informed of what was doing at Camp Dix. 20

Q. Of the erection of the camp?

A. Of the work down there.

Q. But there was no intimation given you that there were any rights to be given away?

A. Yes, sir; we knew of that as well.

Q. At what time did you know of that?

A. The last of June, as soon as they started to build the camp.

Q. What did you know with relation to that?

A. Mr. Hargrove kept me fully informed, and also Mr. Black. 30

Q. That you were to give up the rights that belonged to the Farmers' Telephone Company at Camp Dix?

A. We didn't give up rights.

Q. You say you were informed?

A. Yes.

Q. Of what?

A. Of the agreement we were going to make with them.



Q. With whom?

A. With the other company, the New York company.

Q. Who gave you the information?

A. Mr. Black.

By the Court.

Q. To let them into your district?

A. Yes.

Q. Who composed the Executive Committee?

10 A. Mr. Hargrove, Mr. Woodward, Mr. Shinn  
and myself, I think.

Q. What were the duties?

A. The Executive Committee had charge of  
all building.

Q. A working committee?

A. Yes, sir.

No cross-examination.

*Henry M. Black*, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

20 Direct examination, by Mr. Bergen.

Q. Where do you reside?

A. Jobstown, New Jersey.

Q. Are you president of the Farmers' Telephone  
Company?

A. I am.

Q. How much stock do you own in that company at  
the present time?

A. One share I think it is now.

Q. Who gave you that one share?

30 A. The money that I had earned in my lifetime.

Q. Have you sold that one share to anybody?

A. No.

Q. How much stock did you hold in your own name  
the first of January of the present year?

A. 1,909 shares.

Q. Have you sold any of that stock?

A. I have.

Q. When did you sell that stock?



A. About two weeks ago, when the transfer was made.

Q. When did you agree to sell that stock?

A. I agreed in July, 1917, to secure stock, of which part of it I owned at that time, but I didn't own all of it at that time.

Q. How much money did you get for that stock, Mr. Black?

Mr. Wells—That is objected to; it has nothing to do with the case, and I think the Court **10** should protect him in it.

The Court—Objection overruled.

A. \$65.00 a share.

Q. With whom did you make that contract to receive that money?

Mr. Wells—That is objected to as irrelevant.

The Court—Objection overruled.

A. With the New York Telephone Company in July, 1917.

Q. You made that contract in July, 1917?

**20**

A. Yes, sir.

Q. Not in June?

A. No, sir.

Q. What time in July, 1917?

A. The early part of July. I don't remember the exact date, the 2d, or 3d or 4th.

By the Court.

Q. Is the contract here?

A. No, sir.

Q. Is the contract in writing?

**30**

A. Yes, sir; it was in July; it might have been the 4th, it couldn't have been before the first; it was the 2d, 3d or 4th of July.

Q. 1917?

A. 1917.

Q. You haven't a copy of that contract here?

A. I have not.

Q. With whom was that made.



Mr. Bergen—I call for a copy of that contract.

Mr. Abromeit—Here it is (producing it).

Mr. Bergen—I offer it in evidence.

Mr. Wells—It is objected to as incompetent, irrelevant and immaterial, and as having nothing to do with the subject-matter in dispute.

Mr. Abromeit—I make the same objection.

Mr. Collins—The same objection is made by us.

10 Q. This is the contract you made?

A. Yes, sir.

Said contract is marked "*Exhibit C 11.*"

Mr. Abromeit—I also produce an extension of the agreement.

Mr. Wells—That is objected to.

Said extension of agreement is marked "*Exhibit C 12.*"

Q. That agreement, made June 29, 1917, was there anything given to you for making that contract by any one?

20

A. No, sir.

By the Court.

Q. Did you get a private consideration for the making of that agreement?

A. Nothing whatsoever; the agreement was made to the very best advantage of the corporation.

30 Q. When did you first take up with any of the officers of the Bell Telephone Company, or any of the officers of the Delaware and Atlantic Company, the making of this contract of June 29, 1917?

A. I don't recall specifically the date; the early part of June, because the question was brought up to the members of the Board in regard to it, and there was back and forward a discussion; the Executive Committee knew of a dicker of that sort, and knew that it was impossible for our corporation to build a line there, and if we could make some equitable and more profit-



able agreement by means of a contract, it was wise to do it.

By the Court.

Q. Are the two agreements, one of June 29, with reference to the invasion of the Farmers' Telephone Company's territory, and the sales agreement of July 2, 1917, independent or interdependent?

A. I would say they were quite independent; I would say that the traffic agreement was made 10 to the advantage of the corporation—

Q. Were they made independent?

A. Yes; then we made an agreement of July 2d, which would take the holdings I had.

Q. Was the agreement of July 2d, contemplated at the time the agreement of June 29 was entered into?

Mr. Abromeit—The contract contains a provision for that.

A. I would say yes.

Q. With whom did you deal in putting through these 20 two contracts?

A. With Mr. Sylvan, who was the active head.

Q. What are his initials?

Mr. Abromeit—Mr. T. P. Sylvan, of Montclair, New Jersey.

Q. He is the gentleman you had your dealings with?

A. Yes, sir.

Q. When did you first meet him?

A. The early part of June.

Q. Did you discuss with him the traffic agreement in 30 the early part of June?

A. I think that was brought up the first thing.

Q. Did you discuss with him at that same first meeting the purchase of the stock?

A. No, I don't think so.

Q. When did you begin to discuss with him the purchase of the stock?

A. Oh, not—I don't know; it was after the middle of June, I should think.



Q. You had discussed it with him prior to June, when you had your discussion with Mr. Reeves and Mr. Hargrove?

A. The day before, I guess, the 15th or 16th.

Q. And at that time he had agreed to purchase the stock from you at sixty-five?

A. No, no specific agreement.

Q. Had you then told him you had the stock to sell to that company, or could get it for them?

- 10 A. I told him I could no doubt deliver him the majority of that stock, and that I would have to discuss the matter with those that held stock; and so on a meeting of June 17, Mr. Reeves and Mr. Hargrove were called to come to my house, and I took up the question with them, of the Telephone Company, as they had known I had tried for two years to induce them to buy the system, and they had refused, but at the present moment they were pressed by the Government to give them immediate service in the cantonment, and I
- 20 thought it was the logical time to make some sort of a trade or sale of the control of our company, because the year previous we had not made any money; the losses were great owing to the fact that the labor was increased and everything in running the business was, and we were going down. We owed about \$11,000, and to build this cantonment was practically out of all reason and all hope. And Mr. Hargrove and Mr. Reeves at that time coincided with me; they thought it was wise to try and get out. I then told Mr. Hargrove and Mr. Reeves that to secure the stock I wanted
- 30 it to be thoroughly and clearly stated to everyone that there was no subterfuge in this transaction; we couldn't handle this proposition; we were losing, and I didn't feel I wanted to continue; I had worked for the corporation for fifteen years without any compensation whatsoever. I met all the financial emergencies as they came up; and after this discussion they started out with the idea of getting stock in without any misrepresentation.



Q. And when the Bell Telephone Company wanted to come in, you considered it the proper time to approach them with the idea of the purchase of the stock?

A. I certainly did.

By the Court.

Q. Whose money was it that paid for the stock, yours?

A. I paid some money and borrowed some money.

Q. Of the Telephone Company?

10

A. The Telephone Company loaned me money, and I borrowed money from the bank.

Q. Were you the representative of the Telephone Company?

A. No, they advanced me money; they loaned me money when I needed money.

Q. On this purchase?

A. When I would deliver a certain amount of stock, sometimes I would take it to the Telephone Company and borrow it, and sometimes 20 to the bank, the New York Telephone Company.

Q. You delivered this stock over to the company about two weeks ago?

A. Yes, sir, I made an assignment, a transfer.

Q. Did they pay you any money at that time?

A. Yes, sir, they had loaned me before; they paid me more money last time.

Q. You have received your \$65.00 a share for that 1,909 shares?

A. I have to-day.

30

Q. How much money did you expend for the stock which you bought in?

A. I paid \$50.00 a share for it.

Complainants rest.

Mr. Collins—I offer in evidence the consent of the Board of Public Utility Commissioners, dated July 30, 1918, relative to the transfer of stock to the New York Telephone Company.



Said consent is marked "*Exhibit D 1.*"

Both sides rest.

Argument Tuesday, May 6, 1919.

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Submitted June 10, 1919. Decided July 10, 1919.

IN CHANCERY OF NEW JERSEY.

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BETWEEN

ROBERT N. KEELY ET AL.,  
*Complainants,*

AND

HENRY M. BLACK ET AL.,  
*Defendants,*

CONCLUSIONS.

(*Filed July 16, 1919.*)

20

For the complainants—Mr. Martin V. Bergen and Mr. Thomas P. Curley.

For the defendant Henry M. Black—Mr. Harold B. Wells.

For the defendant Farmers Telephone Company—Messrs. Collins & Corbin (Mr. Gilbert Collins, of counsel).

For the defendant The New York Telephone Company—Mr. C. M. Abromeit.

30

BACKES, V. C.

This suit is brought by stockholders of the Farmers' Telephone Company to recover for the company, from Henry M. Black, its president, secret profits made by him in securing the transfer of certain property rights of the company, and the control of the company, to the New York Telephone Company and the Delaware and Atlantic Telegraph and Telephone Company, known as the "Bell Companies," in breach of his trust.



The facts are not in dispute. The Farmers' Telephone Company is capitalized at \$100,000, divided into 2,000 shares of the par value of \$50, and was a dividend paying corporation. Black owned upwards of five hundred shares, and controlled others belonging to members of his family; the remaining shares were held by farmers and merchants of the vicinity in which the company operated. He was the largest individual stockholder, and had been president of the company for many years. The company's telephone system covered an area of approximately 450 square miles, connecting communities in Burlington, Monmouth and Ocean counties, locally and with "long distance," and it had the exclusive right, by contract with the Bell companies, of furnishing telephonic communication within this district. In June, 1917, just after we entered the war with Germany, Wrightstown, within the district, was selected by the Federal Government as a cantonment—Camp Dix—and the Farmers' Company installed telephonic service, and engaged with the military official in charge of the camp to provide future needs, and to that end arranged with a leading supply company to furnish the equipment. Shortly afterwards the Farmers' Company was notified by the supply company that the Bell Companies would install the system at Camp Dix, and that the equipment would be furnished to those companies. Without notice or apology the 'phones of the Farmers' Company were disconnected, and 'phones of the Bell Companies took their place. And this is the explanation: Black secretly agreed with the Bell Companies to release them from their exclusive grant to the Farmers' Company of the territorial rights to Camp Dix, and to deliver to them at least fifty-five per cent. of the capital stock of the Farmers' Company on or before August 1st then next, in consideration that the Bell Companies would purchase his holdings and additional shares up to fifty-five per cent. at par. The Bell Companies further



- agreed to pay Black \$45,000 if he procured to be delivered to them within one year all the shares at par, or \$15 per share if over 80 per cent., or \$10 per share if over 75 per cent, or \$5 per share if over 55 per cent. be delivered. The arrangement was at first verbal. Black employed crude, and by no means original, methods to accomplish his purpose. He browbeat the twelve directors into handing over their shares by the threat that he would so manipulate the company that it
- 10** would never again pay a dividend, and they believed him, and then he salved them with a promise of \$5 per share above par if they would accede, of which they have not, as yet, seen the color; and he sent his emissaries with the same bug-a-boo to the remaining stockholders, with the result that he gathered in all the stock except the eighty shares held by the complainant Dr. Keely, who refused to be intimidated. When Black secured the holdings of the directors, some four or five hundred shares, he caused to be re-issued to each
- 20** of them a single share to colorably qualify them as a board, but he was careful to exact an assignment in blank of the certificates. He then, under date of June 29th, signed, as president, an agreement between the Farmers' Company and the Bell Companies releasing the exclusive rights to Camp Dix, and under date of July 2d he executed another personally (it is fair to assume they were executed simultaneously), wherein he and the Bell Companies reduced to writing their verbal arrangement that Black was to obtain the release and
- 30** deliver to the Bell Companies the control of the Farmers' Company. The agreement recites that it is entered into by the Bell Companies relying solely upon the truth of representations made by Black as to the Farmers' Company's legal status, and its physical and financial condition therein enumerated in detail, and that Black was the holder of at least fifty-five per cent. of the capital stock, and that he was in position to acquire more, and was willing to sell it to the Bell Companies. By the "First" section Black agrees to sell and the Bell



Companies agree to purchase on or before August 1, 1917, fifty-five per cent., or 1,100 shares, for \$55,000, "provided and upon condition

(A) That the Farmers' Telephone Company shall have duly released, in writing, so much of the territory sub-licensed to it by the respective Bell Companies under the sub-license agreement or agreements now in force between the Farmers' Telephone Company and the Bell Companies as is within the proposed United States army cantonment, and its environs contemplated to be established or which may hereafter be established at or near Wrightstown, New Jersey, and that said Farmers' Telephone Company shall have formally consented, in writing, to the furnishing by the Bell Companies, or either or both of them, of telephonic service within the territory so released, and has released and discharged the Bell Companies severally from any further obligations under or by virtue of said sub-license agreement or agreements with respect to the territory so released except so far as said territory thereby shall become a part of the territory operated by the Bell Companies, and said Farmers' Telephone Company shall have agreed in writing to the use by the Bell Companies, or either or both of them, of the poles, lines, plant and equipment of the Farmers' Telephone Company within the territory so released, at the usual rental or attachment charges therefor."

And (B) that the authorization of the Board of Public Utility Commissioners to the transfer be obtained. By the "Second" section the Bell Companies agree, provided the 1,100 shares have been delivered and transferred according to the terms set forth in the "First" section, and "the provisos of said section have been fully met and complied with," to purchase the remaining shares within one year at \$50 per share, if



procurable. In the "Third" section, Black covenants, warrants and guarantees the representations made in the recital of the contract, and further that "(1) During any time or period affected by this agreement no dividend shall be declared or paid, nor any distribution of capital or surplus made or attempted to be made by the Farmers' Telephone Company." By the "Fourth" section the Bell Companies agree to pay Black \$45,000, if he shall have within one year delivered all the stock  
10 at \$50 per share, "and all the provisions and conditions of this agreement shall have been carried out and complied with," or \$15 a share if more than 80 per cent., or \$10 per share if more than 75 per cent., or \$5 per share if more than 55 per cent., of the stock shall have been delivered and transferred. At the time Black executed these agreements he had, of course, everything fixed for the ratification of the release by the Farmers' Telephone Company. The directors were then mere  
20 "dummies" to whom he presented it on July 11th, and they, without any foreknowledge of it, or the part it played in the stock-sales agreement, of which they knew nothing, although they suspected, Black was profiting heavily, perfunctorily confirmed it. The \$45,000 goal was blocked by Dr. Keely's unyielding attitude, but the scaled-down bonus, amounting to \$28,635, was paid to Black when he delivered up 1,909 shares.

We need look no further than the written agreements for proofs plenary that the bonus was paid in part for the release and in part for the control of the company.  
30 The main thing the Bell Companies sought, bargained for, and got through Black's conduct was the surrender by the Farmers' Company of its exclusive right in the Camp, for which they paid him instead of the company, but nevertheless, in conscience, to the use of the company, \$28,635. The contract of July 2d leaves no doubt of this. In the "Fourth" section it is repeated that the moneys were to be paid only in the event that, among other things, "all the provisions and conditions of this agree-



ment shall have been carried out and complied with," and the most prominent of these is the provision relating to the release. The other consideration for the bonus was the control of the company. A secret profit realized by a director from an undertaking to deliver the corporate control of his company enures to the corporation. *Fletcher Cyclopaedia, Corporations, vol. 4, Sec. 2321*; *2 Thompsons on Corporations, Sec. 1237*; *McClure vs. Law*, 161 N. Y. 78; *Heineman vs. Marshall*, 117 Mo. App. 546; *Porter vs. Healey*, 244 Pa. 427. 10

In either aspects of the case Black is culpable. Complainants' counsel characterize the transaction as bribery of the president to sell out the company, and they may be right, but it is not necessary to resort to such harsh denunciation in order to call him to account. It is enough that it appears, as it does unmistakably, that Black, while president of the company, and in fiduciary relation to it and the body of stockholders, clandestinely dealt with corporate assets for his private gain. The established policy of the law is that a trustee shall not 20

make a penny-piece of personal profit out of his trust and the rule, based upon this salutary policy, is inexorable, and the courts tolerate not the least encroachment, whatever the circumstances may be. The duty of a fiduciary first and all the time is to his trust. It is not only foremost, but his self-interest must be entirely eliminated. It would be a difficult task to find in the books a principle more uniformly upheld and rigorously enforced than the one that a trustee shall not enrich himself by the use of his trust. The authorities are col- 30

lected in *2 Thompson on Corporation, Sec. 1233 et seq.*; *Fletcher Cyclopaedia, Corporations, Vol. 4, Sec. 2303 et seq.*; *Kelsey vs. New England St. Ry. Co.*, 62 N. J. Eq. 742; *Barry vs. Moeller*, 68 N. J. Eq. 483; *Goodbody vs. Delaney*, 82 N. J. Eq. 140.; *Comm. T. I. & Tr. Co. vs. Seltzer*, 227 Pa. 410.

It is claimed and not denied that the terms of the contract of June 28th, whereby Camp Dix was released,



were highly advantageous to the Farmers' Telephone Company, and it is therefore urged on behalf of Black that he is not liable for the profits, because, forsooth, they were not made at the expense of the company. This begs the question. It may be assumed that the bargain was beneficial to the Farmers' Company. The testimony is to that effect. It would have cost the company \$50,000 to install the telephone system at the cantonment, and it was questionable whether the reve-

- 10** nues would have justified the outlay; and it was also an open question whether the traffic arrangement under the contract would not be the more profitable of the two schemes. But whether the contract was or was not advantageous to the Farmers' Company is a matter entirely irrelevant to the question of Black's accountability. A trustee is liable for secret profits even though the transaction from which they arose benefited his trust. *Fletcher's Cyclopedia, Corporations, Vol. 4, Sec. 2307; 2 Thompson on Corporations, Sec. 1234.* The cestui
- 20** que trust is not only entitled to a part but to all the benefits.

It is also possible that the stockholders, individually, may recover from Black for deceit. The authorities are collated in the notes to *Sec. 2564 of 4 Fletcher's Cyclopedia, Corporations.* That possibility is not, however, involved in the proposition here presented and decided: that a president of a corporation cannot use corporate property, nor his office, for private gain.

- 30** I will advise a decree in favor of the Farmers' Telephone Company for the amount received by Black from the Bell Companies in excess of \$50 a share, with interest. If there is any question as to the exact amount, I will hear further testimony.

The complainants are entitled to costs.



## IN CHANCERY OF NEW JERSEY.

BETWEEN  
 ROBERT N. KEELY AND  
 GEORGE PFEIFFER, JR.,  
*Complainants,* } On Bill, &c.  
 AND  
 HENRY M. BLACK ET AL.,  
*Defendants.* }

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## FINAL DECREE.

*(Filed Sept. 18th, 1919.)*

This cause coming on to be heard on bill and amended bills, answers and replications, in the presence of Thomas P. Curley and Martin V. Bergen, of counsel with the complainants, Harold B. Wells, Esq., of counsel with the defendant, Henry M. Black, Messrs. Collins and Corbin, of counsel with the defendant, Farmers' Telephone Company and Carl M. Abromeit, Esq., of counsel with the defendant, New York Telephone Company; and the pleadings having been read and evidence having been taken, and the arguments of counsel thereon having been heard, and the Court having duly considered the said pleadings, proofs and arguments; and it appearing to the Court that the defendant, Henry M. Black, was the president and a director of the defendant, Farmers' Telephone Company, which company had exclusive grants from the Bell Companies of the territorial rights to Camp Dix; that in June, 1917, the said Henry M. Black secretly agreed with the said Bell Companies to release them from their exclusive grant to the Farmers' Telephone Company of such territorial rights and to deliver to them at least 55 per cent. of the capital stock of the Farmers' Telephone Company on or before August 1st then next in consideration that the said Bell Companies would purchase his hold-

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ings and additional shares up to 55 per cent. at par, the Bell Companies further agreeing to pay the said Henry M. Black \$45,000 if he procured, to be delivered to them within one year, all the shares of the Farmers' Telephone Company at par, or \$15.00 per share if over 80 per cent., or \$10.00 per share if over 75 per cent., or \$5.00 per share if over 55 per cent., be delivered; that under date of June 29th, 1917, the said Henry M. Black signed, as president, an agreement between the Farmers' Telephone Company and the Bell Companies releasing the exclusive rights to Camp Dix, and under date of July 2d, 1917, he executed another agreement personally wherein he and the said Bell Companies reduced to writing their verbal agreement that the said Black was to obtain the release and to deliver to the Bell Companies the control of the Farmers' Telephone Company; that under said secret agreements the said defendant, Henry M. Black, has delivered to the Bell Companies 1,909 shares of the stock of the Farmers' Telephone Company and has received from the said companies the par value of same and an additional sum of \$15. on each of said shares of \$28,635; and it further appearing to the Court that the said Henry M. Black should pay into the treasury of the Farmers' Telephone Company said sum of \$28,635, with interest;

It is thereupon, on this twenty-ninth day of July, A. D. 1919, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the defendant, Henry M. Black, do pay to the Farmers' Telephone Company the said sum of \$28,635, with interest thereon from March 14th, 1919, \$644.28, a total of \$29,279.28, within sixty days from the date of this decree.

And it is further ordered, adjudged and decreed that a special allowance as counsel fee of \$500 is hereby made to Messrs. Thomas P. Curley and Martin V. Bergen, of counsel with the complainants, and that the sum of



\$38.40 be allowed complainants and expended by them for notes of testimony furnished to the Court, and that said sums be included in the taxed costs in this cause. And it is further ordered, adjudged and decreed that the said taxed costs of the complainants, including such sums, shall be paid to the complainants or their solicitors by the said defendant, Henry M. Black. And it is further ordered that said sums be paid by said Henry M. Black within sixty days of the date of this decree.

E. R. WALKER, C., 10

Respectfully advised,

JOHN H. BACKES, V. C.

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IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,

*Complainants,*

AND

HENRY M. BLACK ET AL.,

*Defendants.*

} On Bill, etc.

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APPEAL.

(Filed October 7, 1919.)

The defendant, Henry M. Black, hereby appeals from 30  
the final decree made in this Court, in the above-stated  
cause, bearing date July 29, 1919, and from the whole  
and every part thereof, to the Court of Errors and  
Appeals and the last resort in all causes.

Dated September 22, 1919.

HAROLD B. WELLS,  
*Solicitor and of Counsel with said  
Defendant, Henry M. Black.*



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

HAROLD B. WELLS,  
*Of Counsel with said Defendant, Henry N. Black.*

Service of a copy of the within Notice of Appeal is hereby acknowledged this 22d day of September, 1919.

10 THOMAS P. CURLEY,  
MARTIN V. BERGEN,  
*Solrs. of Compls.*

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NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,  
*Complainants-Respondents,*

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AND

HENRY M. BLACK (APPELLANT), FARMERS' TELEPHONE COMPANY AND NEW YORK TELEPHONE COMPANY,  
*Defendants.*

On Appeal  
from Chancery.

PETITION OF APPEAL.

(Filed October 20, 1919.)

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*To the Honorable, The Court of Errors and Appeals  
in the Last Resort in All Causes:*

The petition of Henry M. Black, 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 29th day of July, 1919, in a cause wherein the said Robert N. Keely and George Pfeiffer, Jr., were com-



plainants, and Henry M. Black, The Farmers' Telephone Company and The New York Telephone Company were defendants, in this respect, to wit:

First. That the said decree adjudges that the said Henry M. Black, president and director of The Farmers' Telephone Company, which had exclusive grants from the Bell Companies of the territorial rights to Camp Dix, did, in June, 1917, secretly agree with the said Bell Companies to release them from their exclusive grant to The Farmers' Telephone Company of such territorial rights, and to deliver to them certain shares of the capital stock of the Farmers' Telephone Company, at the times and for the price in said decree specified, and that the agreement of July 2, 1917, was the agreement of June, 1917, reduced to writing. 10

Second. That the said decree adjudged that the said Henry M. Black, in compliance with said secret agreements, delivered to the Bell Companies 1,909 shares of the stock of the Farmers' Telephone Company, and has received from the said companies the sum of \$28,635 over and above the par value of said stock, and that the said Henry M. Black should repay to the treasurer of the Farmers' Telephone Company said sum of \$28,635, with interest from March 14, 1919, of \$644.28, or a total of \$29,279.28. 20

Third. That the said decree adjudged a special allowance as counsel fee of \$500 to the solicitors of the complainants, and the sum of \$28.40 to the complainants for notes of testimony, and allowing the taxed costs against the said Henry M. Black. 30

And your petitioner humbly appeals from said decree upon the ground that the same is erroneous for that the Chancellor should have adjudged that the complainants' were not entitled to any relief and should have decreed that the complainant's bill be dismissed with costs.

Your petitioner, therefore, prays that the said decree of said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your



petitioner may have such relief in the premises as to this Honorable Court shall deem meet.

HAROLD B. WELLS,  
*Solicitor of and of Counsel with*  
*Appellant Henry M. Black.*

Endorsed—

Service of the within petition of appeal is hereby acknowledged this 7th day of October, 1919.

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THOMAS P. CURLEY,  
MARTIN V. BERGEN,  
*Att'ys of Complainants Robert N.*  
*Keely and George Pfeiffer, Jr.*  
CARL M. ABROMEIT,  
*Sol'r of N. Y. Tel. Co.*  
COLLINS & CORBIN,  
*Sol'r of Farmers' Tel. Co.*

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# NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

ROBERT N. KEELY AND GEORGE  
PFEIFFER, JR.,  
*Complainants-Respondents,*

AND

HENRY M. BLACK,  
*Defendant-Appellant.*

On Petition  
of Appeal.

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FARMERS' TELEPHONE COMPANY  
AND NEW YORK TELEPHONE  
COMPANY,  
*Defendants-Respondents.*

ANSWER.

(Filed November 5, 1919.)

Answer of Robert N. Keely and George Pfeiffer, Jr.,  
the complainants and the respondents to the petition of appeal of the above-named appellant:



These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was on the 29th day of July, 1919, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree, so far 10 as appealed from by the appellant, is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

MARTIN V. BERGEN,

THOMAS P. CURLEY,

*Solicitors for and of Counsel with Respondents.*







## NEW JERSEY COURT OF ERRORS AND APPEALS

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|                            |  |
|----------------------------|--|
| Between                    |  |
| ROBERT N. KEELY AND GEORGE |  |
| PFEIFFER, JR.,             |  |
| Complainants-Respondents,  |  |
| and                        |  |
| HENRY M. BLACK,            |  |
| Defendant-Appellant,       |  |
| FARMERS' TELEPHONE COMPANY |  |
| AND NEW YORK TELEPHONE     |  |
| COMPANY,                   |  |
| Defendants-Respondents.    |  |

ON APPEAL.

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BRIEF FOR RESPONDENTS, ROBERT N. KEELY  
AND GEORGE PFEIFFER, JR.

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### FACTS.

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This is a bill filed by stockholders of a corporation to force the President, who is also a director of the corporation, to repay to the corporation a sum of money which he received as a bonus or gratuity from the purchaser of



part of the corporation's assets. The facts are as follows:

In June, 1917, the Government was planning and beginning to build the Wrightstown Cantonment, and it was necessary that it should have proper telephone communications. It was located in territory which was entirely and exclusively the territory of the Farmers' Telephone Company under traffic agreements with the Bell Telephone Systems. The Farmers' Telephone Company was a comparatively small local company operating in that vicinity. As soon as its officers heard of this future demand on its system they set about providing for taking care of it, ordering their material, etc., but were shortly afterwards notified by the companies with whom they had contracted for material that the Bell Companies had assumed their contracts for materials, and by the Army authorities that the Bell Companies had taken over the territory and displaced their telephones. (See Record, p. 54.)

In the early part of June, 1917, negotiations, secretly to all the other directors or officers of the Farmers' Telephone Company, began between the representatives of the New York Telephone Company (a Bell concern) and the defendant, Henry M. Black (the President of the Farmers' Telephone Company and one of its directors), with the purpose in view of the Bell Company going into this exclusive territory of the Farmers' Telephone Company, taking charge of this territory and giving service to this cantonment. Contemporaneously the subject of the purchase of the stock of the Farmers' Telephone Company was brought up between these representatives of the Bell Company and Mr. Black. These negotiations



culminated in two written secret agreements: the first dated June 29th, 1917, between the Bell Companies and the Farmers' Telephone Company, (signed by Black alone as President,) whereby, for the consideration of one dollar and certain traffic charges, the Farmers' Telephone Company released this exclusive territory (see Exhibit A, Record, p. 8); and second, an agreement between Black and the Bell Companies, dated July 2nd, 1917, whereby Black agreed to sell and the Bell Companies agreed to buy from him the capital stock of the Farmers' Telephone Company at \$50 par and agreed to pay him an additional sum based on a sliding scale according to the amount of stock delivered by Black, provided the Farmers' Telephone Company had released this exclusive territory and would do various other things. (See Exhibit B, Record, p. 12.)

On June 16th, 1917, (Record, pp. 48-74,) Black had an interview with two of the directors, Hargrove and Reeve; stated to them that he had sold the stock and engaged them for a consideration to get the stock in for him. Numerous informal meetings of the directors appear to have followed, and finally, after many threats on the part of Mr. Black, all of the directors had sold all of their stock to him, had received from him a single share to qualify each as a director, (except Hargrove, who actually owned one other share,) but the fact of the sale of the exclusive territory by the Farmers' Telephone Company to the Bell Companies was never known by any of them until after they were dummy directors when they were asked to ratify and did ratify the agreement of June 29th, 1917, at their meeting of July 11th, 1917. (Record, pp. 52, 56 and 70). That the two matters were



contemporaneous, however, is shown by Black's statement to Hargrove at their interview of June 16th, as follows: (Record, p. 71.)

"Mr. Black told me to tell the stockholders that he had now had an opportunity to sell the stock at par, and I could say it for him as President; that he thought best to sell, as the Bell Company was going to build this cantonment, and we weren't in a position to finance it, and we better get out while the getting was good."

(And see Record, p. 58):

That the Bell Companies had already taken over the contract for material from the Western Electric Company which the Farmers' Telephone Company had ordered for this work (Record, p. 54), and had actually taken over the territory and put out the telephones of the Farmers' Telephone Company (Record, p. 54), and that the Bell Companies had already a carload of material at the place, this fact being used by Black as a method of compelling the directors to sell their stock (Record, p. 58) by Black's own admission (Record, p. 107), and the fact that the agreement for the purchase of the stock recites as a condition that the Farmers' Telephone Company shall have released the exclusive territory.

The terms of the agreement relating to the purchase of stock and the fact of a consideration coming to him in addition to the value of the stock and its amount were kept absolutely and rigorously secret between the Bell Companies and Black. It apparently became suspected that he was making a profit, but he refused to give any information other than the false inference that it was a



profit on sale of the stock which he stated he had a right to make and the amount of which was no one's business. The testimony shows that repeatedly, in answer to questions of the various directors as to the profit he was making, he stated it was out of the sale of stock and no one's business, and he refused to give any information. The details of his agreement were never known by anybody connected with the Farmers' Company until it was brought out in the hearing.

Many of the directors refused to sell their stock to him, but he finally succeeded in getting them to do so by threatening them that if they did not sell the stock he would see that no dividends were paid in future by the corporation, as he had control of the stock of the corporation, and that he would use the profits up in salaries, and by finally promising them \$5 a share extra.

Black succeeded in getting in all of the 2,000 shares of stock except the 75 shares owned by the respondent, Dr. Keely; 5 shares owned by the respondent, Mr. Pfeiffer, and one share owned by Mr. Hargrove. For all of this stock, which he did not previously own, he paid \$50 per share, which is its par value, to the previous holders. Some of this money used by him for this purpose was borrowed by him from the Bell Companies. On March 11th, 1919, he turned over to the New York Telephone Company 1,909 shares, and received from them a bonus of \$15 per share in addition to the par value of \$50 per share, or \$28,635 bonus.

In September, 1918, Black appeared at the directors' meeting with eleven officials of the Bell Companies and unsuccessfully tried to have the dummy directors resign and elect as their successors these eleven Bell Company men. (Record, pp. 59, 88.)



The two agreements are:

The First: Dated June 29th, 1917, but ratified at an alleged directors' meeting held on July 11, 1917, between the Delaware and Atlantic Telegraph and Telephone Company and the New York Telephone Company (both of them Bell Companies) and the Farmers' Telephone Company (Exhibit A, Record, p. 8), provides that for the consideration of \$1 and certain traffic charges the Farmers' Telephone Company releases and excludes from its exclusive rights the proposed United States Army Cantonment and its environments, and the two Bell Companies took over this territory.

The Second: An agreement between Black and the two Bell Companies, dated July 2nd, 1917, (Exhibit B, Record, p. 12), provides that Black agreed to sell to the Bell Companies at least 55 per cent. of the 2,000 shares of the outstanding stock of the Farmers' Telephone Company of a par value of \$50, and the Bell Companies agreed to purchase same at a price of \$50 per share upon the conditions:

- (A) That the Farmers' Telephone Company shall have duly released in writing so much of the territory sub-leased to it \* \* \* as is within the proposed United States Army Contonment and its environments \* \* \* and shall have formally consented in writing to the furnishing by the Bell Companies, or either or both of them, of telephone service within the territory so released, \* \* \*
- (B) That the Utility Commissioners consent to the purchase of the stock. As an express condition of this agreement Black covenanted and guaranteed:



- A That the Farmers' Telephone Company was duly incorporated.
- B That its authorized capital stock was \$100,000, consisting of 2,000 shares of a par value of \$50.
- C That it was possessed of good title to its lines and equipment.
- D That the present structural value of its lines, plant and property was not less than \$145,000.
- E That at the time of last delivery of stock its debts and its liabilities would not exceed the aggregate amount of its cash and collectible debts and accounts receivable.
- F That no action would be taken by it to increase its capital stock.
- G That its entire capital stock was issued and outstanding.
- H That its books have been and will be properly kept.
- I That during the time of this agreement no dividend should be declared or paid by it.
- J That it will not sell, assign or transfer any of its lines, plant, property or business, or mortgage or encumber same, without the written consent of the Bell Companies first obtained.
- K That during such period it will maintain and operate its property and not allow any encumbrance or lien to be put on same.

This agreement then provides :

Fourth: In the event that within one year from the date of this agreement the vendor has sold or procured to be sold, delivered and transferred to the Bell Companies or their nominee all of the said issued and outstanding capital stock of the Farmers' Telephone Company at the price of fifty dollars (\$50) per share, as aforesaid, and all the provisions and conditions of this agreement shall have been carried out and complied with so far as the Bell



Companies are able to ascertain, then the Bell Companies shall pay to the vendor the further sum of forty-five thousand dollars (\$45,000), or

In the event that at the expiration of one year from the date of this agreement less than all but more than fifty-five per cent. (55%) of the said issued and outstanding capital stock of the Farmers' Telephone Company shall have been sold, delivered and transferred to the Bell Companies or their nominee at the price of fifty dollars (\$50) per share, as aforesaid, and all the provisions and conditions of this agreement shall have been carried out and complied with so far as the Bell Companies are at such time able to ascertain, then the Bell Companies shall pay to the vendor a further sum for each and every share of such capital stock as has at such time been so sold, delivered and transferred to the Bell Companies, or their nominee, as follows:

Fifteen Dollars (\$15.00) for each and every such share if over eighty per cent. (80%) of said issued and outstanding capital stock has been so sold, delivered and transferred; or

Ten Dollars (\$10.00) for each and every such share if over seventy-five per cent. (75%) of said issued and outstanding capital stock has been so sold, delivered and transferred; or

Five Dollars (\$5.00) for each and every such share if over fifty-five per cent. (55%) of said issued and outstanding capital stock has been so sold, delivered and transferred.

In two other places the agreement states that the purchase price of the stock is \$50 per share.

The price to be paid by the Bell Companies and to be accepted by the vendor for the aforesaid eleven



hundred (1100) shares of capital stock of the Farmers' Telephone Company shall be the sum of fifty-five thousand dollars (\$55,000).

Second. The Bell Companies, provided the said eleven hundred (1100) shares of the capital stock of the Farmers' Telephone Company have been duly sold, delivered and transferred to them or their nominee within the time and upon the terms and conditions set forth in section "First" hereof and the provisos of said section have been fully met and complied with, shall at any time and from time to time within one year after the date of this agreement purchase at the price of fifty dollars (\$50) per share any or all of the remaining issued and outstanding capital stock of said Farmers' Telephone Company which the vendor may acquire or procure to be sold, delivered and transferred to the Bell Companies or their nominee.

In other words, this agreement provides that if the Farmers' Telephone Company will give over this exclusive territory, and pending the final delivery of the stock will not allow its liabilities to exceed its quick assets; will not increase its capital stock; will have its books properly kept; will not declare any dividend; will not sell, assign, transfer, mortgage or encumber its property without the consent of the Bell Companies, but will maintain and operate same, then within one year from its date the Bell Company will purchase any amount of stock of the Farmers' Telephone Company Black can sell to it at \$50 a share, and in addition will pay him a further sum determined in amount by the proportion of stock he sells.

All the conditions imposed on the Farmers' Telephone



Company by the agreement between Black and the Bell Telephone Companies were carried out by it. It gave up its exclusive territory, passed its dividend, reduced its liabilities, etc.

As side lights on Black's mental attitude, it is interesting to note that the agreement (Exhibit B) states that all the stock of the Farmers' Telephone Company was outstanding, but the record shows that when this scheme was practically agreed on by him with the Bell Companies there was \$2,400 of stock still unissued, and Black at once had this issued at par, about one-half to himself and the rest to the directors. That he promised Hargrove and Reeves \$1,500 each on a false statement to them that he would make only \$6,000 out of certain of the stock and would divide it with them, but has not paid them. That he promised the directors a bonus of \$5 a share, but has not paid it to them, and that immediately on getting the directors into the position of being dummy directors without any personal interest he had them vote him a salary of \$1,800 per year—dated back one year. (He previously had not had any salary.)

## LAW.

Complainants-respondents contend:

(1) That this sum, \$28,635, was a gratuity, a secret profit made by Black out of his office and belongs to the Farmers' Telephone Company, and Black should be decreed to pay that sum with interest to that company.



(2) That it was a bribe or gratuity given to a president and director:

- (a) by a future purchaser of stock to get him to use his influence to prevent a declaration of dividends until the stock had been transferred;
- (b) by a future purchaser of part of its territory to get him to use his influence to have the corporation put through the sale;
- (c) and pending the negotiations put the corporation in a position which rendered it impossible to resist the loss of the territory.

(3) That it was a sale by the president and director of his office and of immediate control of the organization of the corporation.

(4) That it was the true consideration for the giving up of the exclusive territory by the Farmers' Telephone Company, subverted by the New York Telephone Company and Black to the latter.

1. This agreement, on its face, shows that Black did not receive \$65 a share for the stock, but received \$50 a share, the additional consideration being paid for his securing various corporate actions by the Farmers' Company.

2. This case does not depend on whether or not the agreement of July 2nd, 1917, was a fair bargain for the Farmers' Company.

2 *Thompson on Corporations*, Sect. 1237.

*Comm. vs. Seltzer*, 227 Pa., 410.

4 *Fletcher Cyclopaedia-Corporations*, Sects. 2307 2342.



3. It is simply that a director cannot make a profit, secret or otherwise, in dealing with the corporation affairs. Such profit belongs to the corporation.

*Redmond vs. Dickerson*, 9 N. J. Eq., 507.

*Kelsey vs. New England Ry.*, 62 N. J. Eq., 742.

*Parker's New Jersey Corporations*, p. 182.

4 *Fletcher Cyc.-Corporations*, Sect. 2303, etc.

*Gardner vs. Butler*, 30 N. J. Eq., 702.

*Barry vs. Moeller*, 68 N. J. Eq., 483.

*Thompson on Corporations*, Sects. 1235, 1236.

*Goodbody vs. Delaney*, 82 N. J. Eq., 140.

*Endicott vs. Marvel*, 81 N. J. Eq., 378.

*Cases in Parker's Dig. "Corporations" & Supplement*, Sects. 183, 184 & 185.

A director might be paid a reasonable consideration by his fellow directors, but any such transaction would be scrutinized by equity.

*Endicott vs. Marvel*, 81 N. J. Eq., 378.

*Marr vs. Marr*, 73 N. J. Eq., 643.

And if it amounted to giving over property of the corporation to a director it is voidable by a stockholder.

*Endicott vs. Marvel*, 81 N. J. Eq., 378.

But the secrecy of the profit in this case eliminates the question of any authorization or ratification by stockholders.

4 *Fletcher Cyc. Corps.*, Sect. 2306.

4. A director or president of a corporation may buy and sell its stock and make a profit in doing so. His accountability would be to the stockholders from whom he



purchased, for he might have a duty of disclosure to them.

4 *Fletcher Cyc. Corps.*, Sect. 2564.

*Thompson on Corporations*, Sects. 1240, 1419.

But where the sale of stock was a mere cloak to hide a dealing in corporation matters he will be required to pay in his profits to the corporation as a sale of the corporation assets.

*Comm. vs. Seltzer*, 227 Pa., 410.

or the delivery of corporate control

4 *Fletcher Cyc. Corporations*, Sect. 2321.

*McClure vs. Law*, 161 N. Y., 78.

*Heinemann vs. Marshall*, 117 Mo. App., 546.

*Porter vs. Healey*, 244 Pa., 427.

*Thompson on Corps.*, Sect. 1237.

or any illicit use of his influence as a director.

*Porter vs. Healey*, 244 Pa., 427.

In *Commonwealth Title Insurance & Trust Company vs. Seltzer*, 227 Pa., 410, defendants were the president and a director of a corporation which had practically its entire capital invested in a piece of real estate. The president came in contact with the agent of a would-be purchaser. He knew that his corporation desired to sell the tract, but informed the agent that he believed it could not be purchased. After this negotiations were carried on between the two which resulted in a contract whereby the agent was granted an option to purchase from the president enough stock to control the corporation, the purpose being to put the agent or his constituent in a



position to secure the real estate. The president and the other defendant accumulated the stock called for by the contract and sold it to the agent. The agent purchased the property at a not inadequate consideration and the money was divided among the stockholders. Certain of the stockholders, believing that the officers had so manipulated the sale as to make a secret profit for themselves, filed the bill. The Supreme Court, in affirming the decree requiring accounting, says, p. 416:

"It is not only perfectly conceivable that an unprejudiced mind might reasonably reach the conclusion that all of the negotiations, arrangements and contracts in the stock deal, and the sale and the transfer of the real estate, were really parts of one and the same transaction, but anyone reading the testimony and looking at the documentary evidence would find his mind irresistibly traveling to the conclusion that, although the parties endeavored to give them the appearance of separate transactions and even on occasions talked to one another as if they were such, nevertheless they all the time knew that everything they were doing was intended to bring about the sale and transfer of the real estate from the corporation represented by the defendants to the corporation represented by the agent. These defendants, as managing officers, were under an inherent obligation not to in any manner use their positions to advance their individual interests as distinguished from the interests of their corporation. When the president of this corporation was approached by a likely buyer, instead of persistently maintaining the attitude that there was no possibility of the property being acquired by purchase, and then proceeding to use this information for his own personal benefit, and incidentally to the detriment of his corporation,



he should have overlooked his own welfare and acted entirely for the benefit of his corporation. An officer is but the agent of his corporation, and in all transactions in which its interests are involved he must act for it with unselfish singleness of purpose. If in any such transaction it appears that he has acted against the interest of his corporation, the mere fact that the means used to accomplish the unlawful end would, if standing alone, be lawful in themselves, will not save such officer from responsibility to account for profits thus made by him which otherwise might have gone into the coffers of his corporation. The director of a corporation is a trustee for the entire body of stockholders, and by assuming the office he undertakes to give his best judgment in the interests of the corporation in all matters in which he acts for it, untrammelled by any hostile interest in himself or others; and all secret profits derived by him in any dealings in regards to the corporate enterprise must be accounted for to the corporation. (*Bird Coal & Iron Co. vs. Humes*, 157 Pa., 278.) In scrutinizing the acts of such officers, the Court will not heed mere forms when the substance which lurks behind them shows profits from a dealing in the corporation property. It is quite true that the profits in the present case were made to appear on the surface as not coming from the sale of the property of the corporation; but as all the facts show that the purchaser only wanted the real estate, and not the control of the franchise of the corporation, there is little or no doubt that the profits paid to the two defendants were considered by the purchaser as part of the cost of the real estate. The purchaser wanted the property and was willing to pay a price for it. The defendants knew this, and the facts justify the inference that the stock dealing was for the very purpose of diverting a part of that price from the



corporation into their own pockets; and this, in a nut-shell, is the theory upon which the case was decided. The conclusions of the Court below were reached, and are here sustained, on the peculiar facts in this case, with a full and express recognition of the general rule that a stockholder, even though he be one of the managing officers of a corporation, has the right to buy and sell its stock and to keep any profits which he may thus acquire. But corporation officers cannot, under cover of this rule, carry through a transaction such as appears in this case without accounting for profits thereby diverted from their corporation."

5. This additional consideration was paid to Black partly for the purpose of securing control of the corporation, and therefore belongs to the corporation itself.

The agreement between Black and the Bell Companies, on its face shows that the additional consideration was not paid for the stock—its value is conceded throughout the whole case to have been that which was paid for it—\$50 per share. The additional consideration was paid to Black for something else. The agreement shows what this other matter was. It was that the corporation should convey its exclusive rights in this territory and, pending the final delivery of the stock, should not allow its liabilities to exceed its quick assets, not increase its capital stock, have its books properly kept, not declare any dividend, not sell, assign, transfer, mortgage or encumber its property without the consent of the Bell Companies, but maintain and operate it. In other words, the additional consideration was paid (1) for the release of the territory, and (2) for control over certain corporate actions of the corporation. That this latter, as corporate



control, was in the minds of the parties is shown by the attempt made by Black and the New York Telephone Company to get the dummy directors to resign and officers of the New York Company elected in their stead long before the payment of the bonus, and also by the attitude of the organization of the Farmers' Telephone Company toward this suit in actively and bitterly obstructing and contesting it.

As we understand the argument of counsel for Black it is contended (as it would seem impossible to do under the agreement) that this additional consideration was paid to Black for the stock, and not that it was paid to him for his services rendered to the New York Telephone Company in getting in this stock. This latter reason is not argued and is not mentioned in the agreement as the cause, but granting for argument that this did not enter into the minds of the parties, partly as the reason, it must be conceded that a further part of the reason this sum was paid to him was to secure his influence in getting the corporation to release this territory and do or not do these other corporate acts—that is, in part at least this additional consideration was paid for control of the corporation.

In *Porter vs. Healy*, 244 Pa., 427, defendants were the president and a majority of the board of directors of a corporation. A purchaser appeared who was willing to expend \$202,330 for all the stock. This sum was divided; \$115,500 of it was deposited to be paid for the outstanding 700 shares of stock at \$165 per share, and \$86,830 was paid to the defendants under a secret agreement, its terms not fully disclosed until hearing; the bonus was not paid over until the defendants had resigned from and



the purchasers' nominees elected to the board of directors in their stead. The bill was filed to compel the defendants to divide proportionately (the corporation having disappeared) this \$86,830 with the complainants. The Chancellor found that the bonus sum was not so much a part of the price paid for the stock of defendants as a secret consideration paid to them for the purpose of gaining immediate control of the organization of the corporation, and decreed according to the prayer of the bill. In affirming this decree, the Supreme Court says (p. 433):

"The Court below found in effect that the defendants had capitalized and made an illicit sale of their influence and positions as directors of the Light, Heat, & Power Company, and that the \$86,830 was paid and accepted by them, at least in part, as a consideration for so doing."

and page 434:

"In determining that the defendants would have to pay to each of the plaintiffs a share of the \$86,830 proportionate to their respective holdings of stock, the Chancellor proceeded on the theory that a majority of the directors of a corporation cannot 'barter their offices for individual gain,' particularly when they act in a manner calculated to mislead and deceive others into parting with their stock at a price fixed upon by the purchaser and such directors, and when, if it had not been for their illegal conduct, each of the shareholders would, in all probability, have received out of the money so illicitly gained, an increased price for his stock equal to the amount awarded to him. After referring to the authorities, the Court below states, 'Our attention had not been



called to any case where \* \* \* the majority directors, who were majority stockholders, sold the control of the company and the resignation of their offices for a specific sum independent of the money received for their shares of stock. \* \* \* The authorities that seemingly countenance a resignation by majority directors as part consideration for their sale of stock are careful to say that such contracts are carefully scrutinized by the Courts. They must be entirely free of any bad faith to the shareholders, and, as already known, the defendants cannot meet this test.' We likewise have examined all the authorities cited, and find none that rules this case; but we feel that the Court below applied correct and appropriate legal principles in reaching its final conclusion that the defendants were liable to the plaintiffs in accordance with the decree entered.

"The principle is well established that those in control of the management of a corporation are under an inherent obligation not in any manner to use their positions to advance their individual interests as distinguished from the interests they represent, and in Pennsylvania we have ruled that 'A director of a corporation is a trustee for the entire body of stockholders'; it is likewise settled in this State that, though one who is a director may sell his stock and keep any profits so acquired, yet, under the guise of this rule, he cannot, in combination with others, even by means which if standing alone would be lawful in themselves, take advantage of his official position for his individual profit to the detriment of his corporation or its other stockholders. (*Bird Coal & Iron Co. vs. Humes*, 157 Pa., 278, 287; *Com. Title Ins. & Trust Co. vs. Seltzer*, 227 Pa., 410.) If the present case were merely an instance where majority stockholders disposed of their stock and honestly took advantage of the fact that they held



a controlling interest in order to gain a higher price than the minority holders were subsequently able to secure and who at the same time incidentally resigned their places as directors, then, of course, the complainants would not have a good cause for action. But, as already stated, the Court below found that such was not the case; hence, most of the appellant's argument has no application.

"In the last analysis there is really only one substantial question for our consideration, and that is, was the Chancellor justified in concluding that the defendants intended to, and in fact did, include the sale of their positions, with the influence flowing therefrom, as part of the consideration delivered by them in return for 'the control fund' of \$86,830. On this important point, after a review of all the proofs, we do not feel that the inferences drawn by the Chancellor who heard the testimony are unreasonable or his conclusion unwarranted; therefore, we accept the facts embraced in that conclusion as properly established, and with these found against the defendant, the law of the case is clear and requires no long citation of authorities. By force of existing conditions the corporate form is rapidly becoming the accepted method of conducting business, and much of the wealth and savings of the people is invested in such enterprises. When the individual investor places his contribution of capital in a concern of this character, of necessity he must trust to the integrity of its directors, and he may do so with the knowledge that the law requires a high degree of honesty on their part, not only toward the corporation itself, as a separate entity, but toward its shareholders, and that, in so far as those in control owe a duty to the latter, they must observe good faith to the whole body of stockholders, and may not act with any separate group or clique in order to serve



their own personal interests. Although the stock of one who is a director of a corporation is his individual property to be dealt with as he pleases, and to be sold for such a price as he may be able to get for it, either in association with others or alone, yet his official position is not his individual property in any sense, and he has no right, either directly or indirectly, to use it for his own selfish ends; when he does so, and thereby derives a gain that can be reasonably traced to such an abuse, all money thus made belongs either to the corporation or, in a case like the present, in common to its shareholders; furthermore, when alleged misconduct of the managers of a corporation is under investigation, as recently said by this Court in the *Tenth National Bank vs. Smith Construction Co.*, 242 Pa., 269, p. 287, "The law has ceased to look at the mere form of the device employed,—it now pierces through the surface and seizes upon the evils which lie within." These general rules work no hardship to anyone—they simply mean that those entrusted with the management of a corporation must be above board, fair and honest with its stockholders in all matters concerning the common enterprise or its control, and that one so situated will not be permitted 'to derive any personal profit or advantage by reason of his position, distinct from his co-shareholders.' All of which is in accord with the law as we defined it in *Bird Coal & Iron Co. vs. Humes*, 157 Pa., 278, 287, and the general principles stated in the text books there cited; see 1 *Potter on Corporations*, sections 324, 328, 330; 1 *Morawitz on Corporations*, sections 515, 516, 518, 519; further, see 10 *Cyc.*, 787, 788, 791, 801, 825. We are not inclined to pare down or limit the application of these wholesome principles, nor are we convinced that they do not fit the present case."



## II.

Appellant also appeals from the allowance of \$500 as special counsel fee, and presents the question on his brief.

Counsel for complainants-respondents are greatly aggrieved by the amount awarded to them, which they believe does not compensate them for their labor in this case. They feel that this Court should modify this decree by ordering either that suitable compensation should be paid to them by Black, or that the well-settled principle should be invoked and a suitable portion of the amount ordered to be paid by Black to the Farmers' Telephone Company should be paid to them as counsel fees in addition to the \$500 ordered to be paid by Black.

The case was by minority stockholders with comparatively small holdings to recover funds for their corporation. The control of the organization of the corporation itself was part of that which had been sold and it actively opposed the action. It was on behalf of a corporation to recover from its President a sum claimed to have been paid to him by another corporation for securing for the second corporation assets of the first corporation, and also securing for the second corporation control of the first corporation. Both corporations, as well as the President, were made defendants, and all three bitterly fought it. So firmly did they believe that the illicit profit had been clothed in a garment of righteousness and that the complainants-respondents had no chance for recovery that actually ten days before trial the second corporation paid over the bonus to the President and took possession of the first corporation, electing their own officers as di-



rectors, who continued to fight the suit. It was a hard fought contest and by the perseverance of counsel we have actually made a fund of \$29,279.28 for the first corporation. It seems to us that we are, therefore, entitled to compensatory counsel fee of such size as will eliminate any possibility that the complainants-respondents will have to pay anything to their solicitors.

If we had represented the Farmers' Telephone Company and had gone into this case with the assistance of our own company a \$500 fee would have been absurdly low, but we had to fight our own corporation against all odds in this most desperate kind of a case, with all kinds of difficulties thrown in our way and with the necessity of preparation from a law standpoint for many different contingencies which might arise from many possible sets of facts, of which we had no real knowledge, until the final hearing, when the facts were first accessible to us.

The fee on the usual scale of collection agencies, as fixed by the Commercial Law League, on a recovery of \$29,279.28, would be \$1,242.12, without suit brought.

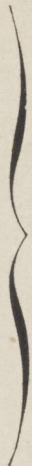
MARTIN V. BERGEN,  
THOMAS P. CURLEY,  
Counsel for Complainants-Respondents.







NEW JERSEY COURT OF ERRORS AND  
APPEALS

|                                                                                                                                                                                                                                                           |                                                                                   |                                         |           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------|-----------|
| <p>Between<br/>ROBERT N. KEELY AND GEORGE<br/>PFEIFFER, JR.,<br/>Complainants-Respondents,<br/>AND<br/>HENRY M. BLACK,<br/>Defendant-Appellant,<br/>FARMERS TELEPHONE COM-<br/>PANY AND NEW YORK TELE-<br/>PHONE COMPANY,<br/>Defendants-Respondents.</p> |  | <p>ON APPEAL FROM<br/><br/>CHANCERY</p> | <p>10</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------|-----------|

BRIEF FOR APPELLANT

*STATEMENT OF THE CASE*

The bill of complaint in this cause was filed by<sup>20</sup> Robert N. Keely, the holder of 75 shares of the stock of Farmers Telephone Company, a New Jersey corporation, and George Pfeiffer, Jr., the holder of 5 shares of said stock. Pfeiffer has not paid Keely for the stock (Case, p. 46, 1. 15) and is really a dummy complainant. The present bill is the third filed in the cause, two previous bills having been struck out with leave to amend.

The bill sought to recover for the company, from<sup>30</sup> Henry M. Black, its president, profits of \$28,635 alleged to have been secretly made by him in securing the transfer of certain property rights of the com-



pany and more than a majority of the stock thereof to the New York Telephone Company and the Delaware and Atlantic Telegraph and Telephone Company in breach of his trust.

Decree was made holding that Black had received secret profits of \$28,635 as president and director, and directing him to pay to the Farmers Telephone Company said amount with interest. A counsel fee of \$500 and costs was allowed complainants. From this decree the present appeal was taken by defendant Black.

### SPECIFICATION OF GROUNDS OF APPEAL

The decree is erroneous in the following respects:

1. The said decree adjudges that the said Henry M. Black, president and director of the Farmers Telephone Company, which had exclusive grants from the Bell Companies of the territorial rights to Camp Dix, did, in June, 1917, secretly agree with the said Bell Companies to release them from their exclusive grant to the Farmers Telephone Company of such territorial rights, and to deliver to them certain shares of the capital stock of the Farmers Telephone Company, at the times and for the price in said decree specified, and that the agreement of July 2, 1917, was the agreement of June, 1917, reduced to writing.
2. That the said decree adjudged that the said Henry M. Black, in compliance with said secret agreements, delivered to the Bell Companies 1,909 shares of the stock of the Farmers Telephone Company, and has received from the said companies the



sum of \$28,635 over and above the par value of said stock, and that the said Henry M. Black should repay to the treasurer of the Farmers Telephone Company said sum of \$28,635, with interest from March 14, 1919, of \$644.28, or a total of \$29,279.28.

3. The said decree allows a counsel fee of \$500 to complainants' solicitors and taxed costs against Henry M. Black.

## BRIEF OF THE ARGUMENT

10

### *PREFATORY STATEMENT*

The present bill has delimited the complainants' suit so that it amounts to nothing more than a claim in favor of the Farmers Telephone Company for the alleged secret profits of Black in the sale of his own stock and stock acquired by him, to the New York Telephone Company. Inasmuch as the New York Telephone Company now owns all the stock of the Farmers Telephone Company, except the 80 shares owned by complainants and 11 shares held by directors but controlled by Black, the only relief that complainants are even arguably entitled to is that Black should account to the complainants for the proportion of such alleged secret profits that such 80 shares bear to the total capitalization of 2,000 shares. We believe we can demonstrate, however, that complainants are entitled to no relief whatever.

30

The Farmers Telephone Company is capitalized at \$100,000, divided into 2,000 shares of \$50 par. The company's telephone system covers an area of about



450 square miles and is operated in Burlington, Monmouth and Ocean counties.

In July, 1917, the appellant Black owned upwards of 500 shares of the stock and controlled others belonging to members of his family. He was the largest shareholder and has been president of the company for many years, serving without compensation (p. 108, l. 35). The financial burdens of the company had been on his shoulders for fifteen years (p. 108, l. 37).

In June, 1917, the cantonment known as Camp Dix was put under construction by the United States Government as a training camp. The cantonment was within the territory of the Farmers Telephone Company. For that Company to handle the telephone business of the cantonment it would have been necessary for it to install a telephone system which would have cost \$50,000 (p. 67, l. 20). It was the unanimous opinion of the directors that in view of the temporary nature of the camp it would not pay that company to install the system (p. 67, ls. 10 *et seq.*) This opinion was strengthened by the knowledge that the greater part of the service to and from the camp would be long distance, from which the company would get little return (p. 67, ls. 21-25). There was then subsisting between the Farmers Telephone Company, and the Delaware and Atlantic Telegraph and Telephone Company and the New York & New Jersey Telephone Company (the two latter being part of the Bell system) traffic agreements under which the first named company received fifteen per cent. of toll messages in its territory (p. 68, l. 10.) Under this ar-



rangement the Farmers Company had to install the  
 telephones and appurtenant equipment (p. 68, 1. 18.)  
 On June 29, 1917, the agreement Exhibit A to the bill  
 (p. 8) was entered into between the Farmers Com-  
 pany, the Delaware etc. Company and the New York  
 Telephone Company (with which the New York &  
 New Jersey Telephone Company had been consoli-  
 dated). This agreement provided for a release by  
 the Farmers Company of the right it had under the  
 above-mentioned traffic agreements to furnish tele-<sup>10</sup>  
 phone service within the cantonment, and further  
 provided that the Farmers Company should receive  
 from the Bell companies five per cent. the first year  
 of the toll messages within the released territory and  
 ten per cent. thereafter. Under this agreement the  
 Bell companies had to install the telephone system  
 (p. 68, 1. 20). It is not disputed that this agreement  
 was beneficial to the Farmers Telephone Company.  
 At the time it was made the Farmers Company owed  
 about \$11,000 (p. 108, 1. 25) and to build the tele-<sup>20</sup>  
 phone system in the cantonment at a cost of \$50,000  
 was out of the question (p. 108, 1. 28). The witness  
 Hargrove, secretary of the Farmers Company, who  
 testified for the complainants, admitted that the  
 agreement of June 29, 1917, was beneficial to that  
 company. He said (p. 67, 1. 26) :

"I will admit that under our present ar-  
 rangement on which we received 5 per cent.  
 the first year and 10 per cent. afterwards, it <sup>30</sup>  
 would be as good as the 15 per cent. we would  
 have got if we had installed our own apparatus  
 under the previous agreement."



The agreement of June 29th was signed by Black as president of the Farmers Company, and was ratified by its board of directors on July 11, 1917 (p. 70).

The year previous to 1917 the Farmers Telephone Company had lost money (p. 108, l. 22), and Mr. Black at the time the agreement of June 29th was under consideration concluded that the occasion was opportune for him to sell his own holdings in the Farmers Company. Hargrove and Reeves, fellow-directors, coincided with him (p. 108, l. 28). Black then entered into an independent agreement with the New York Telephone Company and the Delaware and Atlantic Telegraph & Telephone Company under date of July 2, 1917, whereby he agreed to sell his own holdings and such others as he had acquired or might acquire. The price was on a sliding scale. If he delivered all the shares he was to get \$45,000; \$15 per share above par if over 80 per cent., \$10 per share if over 75 per cent., or \$5 per share if over 55 per cent.

20 The agreement is printed in full at pages 12 *et seq.* of the case. It will be analyzed later in this brief.

Black delivered 1909 shares and received \$28,635. None of the stockholders are complaining except the two complainants, holders of 80 shares.

Black approached complainant Keely, the real owner of the 80 shares, and offered him \$65 a share for his stock (p. 39, l. 25). Keely demanded \$150 a share (p. 39, l. 15). Mr. Black told him "it was a hold up game" (Keely's testimony, (p. 41, l. 6). Keely knew at the time, of course, that Black was the president and a director of the company, and he also knew that Black intended to sell the stock at a profit.



p. 39, 1s. 30-40.)

Black refused to be "held up" by Keely and did not purchase his shares. About the time of the sale by Black of his stock Keely transferred to Pfeiffer five shares of stock, and thereafter they filed their bill of complaint.

1

AN OFFICER OR DIRECTOR OF A CORPORATION DOES NOT SUSTAIN A FIDUCIARY RELATION TO AN INDIVIDUAL STOCKHOLDER WITH RESPECT TO THE LATTER'S STOCK, AND MAY PURCHASE STOCK FROM HIM WITH THE SAME FREEDOM AS FROM A STRANGER. IN DOING SO, MERE FAILURE TO DISCLOSE INSIDE INFORMATION WILL NOT MILITATE AGAINST SUCH OFFICER OR DIRECTOR SO LONG AS HE DOES NOT ACTIVELY MISLEAD THE SELLER OR PERPETRATE A FRAUD.<sup>10</sup>

A stockholder who is also a director of a corporation is in a position that must be considered from two standpoints. First, he is, to some extent, trustee for the stockholders, as a body, in respect to the property and business of the corporation; second, as to his own stock, he may do with that as he pleases and dispose of it to whom he sees fit, provided his disposal of his own holdings does not involve a breach of trust. He does not sustain the relation of trustee to individual stockholders with respect to their several holdings of stock over which he has no control.<sup>20</sup>

30

This principle has been clearly enunciated in a decision of this court which has become a leading case in the United States. The case is *Crowell v.*



Jackson, 53 N. J. L. 656. The action was for deceit in the purchase of certain shares of the H. Company by the defendant from the plaintiff. The declaration alleged that the plaintiff was a shareholder and the defendant director and treasurer; that the company had made a favorable sale of property which enhanced the value of its stock; that the sale was known only to the officers and directors; that plaintiff had no knowledge of it; that defendant knew of it and knew that it enhanced the value of the stock and that plaintiff was ignorant of it; that possessing this knowledge he bought the plaintiff's shares of stock at a price for which the plaintiff, in his ignorance of the advantageous sale, was willing to sell them, which was much below the real value of the stock purchased. Said McGill, C., speaking for the court:

20 "We are of opinion that in contemplation of law there can be no fraud without moral delinquency; in other words, that there is no actual fraud which is not also moral fraud. In purchase or sale, if there be no designed misrepresentation by words or deeds and no active intentional concealment, and ~~on~~<sup>no</sup> intentional silence when there is a duty to speak, an action for deceit will not lie. A director, or the treasurer, of a corporation, is not, because of his

30 office, in duty bound to disclose to an individual stockholder, before purchasing his stock, that which he may know as to the real condition of the corporation affecting the value of



that stock. He is, to some extent, trustee for the stockholders, as a body, in respect to the property and business of the corporation, but does not sustain that relation to individual stockholders with respect to their several holdings of stock over which he has no control"

To the same effect is *Board, etc. of Tippecanoe Co. v. Reynolds*, 44 Ind. 509, cited in *Crowell v. Jackson*.<sup>10</sup>

In *Shaw v. Cole Mfg. Co.*, 132 Tenn, 210, L. R. A. 1916B, p. 706, the case of *Crowell v. Jackson* was followed in an equity court. It was charged that dividends were suppressed in order to obtain the stock, but the court found that the company was not in a financial position to pay dividends. The court further found that no special relation of trust and confidence was shown and no special reliance was imposed by the sellers in the buyers. The court said:

"It is to be noted that the Shaws," (the sellers)<sup>20</sup> "were fully aware they were dealing with officers and directors of the company.

"While directors occupy a trust relation to the corporation which they direct, their duty does not apply to the purchase of stock. Dealing in its own stock is not a corporate function. In buying or selling stock, directors may trade like an outsider, provided they do not affirmatively act or speak wrongfully, or intentionally<sup>30</sup> conceal facts with reference to it. There is also the qualification that no other relation of trust exists between the parties.



"This is the holding of a number of the British courts and the appellate courts of the states of New York, New Jersey, Illinois, Indiana, Michigan, Iowa, Pennsylvania, Rhode Island, Louisiana, Washington and Utah."

Many other cases to the same effect are collated in L. A. R. 1916B, p, 706 *et seq.*

10 It will be remembered that only two stockholders holding 80 shares are complaining. We submit that the court must therefore assume that the holdings of the other stockholders acquired by Mr. Black were disposed of to Black fairly and without any fraud on his part inducing the sale. We have, however, gone out of our way to show that Mr. Black was under no fiduciary duty to the other stockholders because of the fact that he was a director and that he could bargain with them at arm's length. This we do in view of the wide range covered by the conclusions of the learned Vice-Chancellor who sat below. At 20 first blush it would appear from a reading of his opinion that all the stockholders whose holdings Black acquired were complaining. Such is not the case, of course.

If this court shall find, as we think we have demonstrated, that Black acquired 1909 of the 2000 shares without any fraud on his part, then the major premise in the Vice-Chancellor's line of reasoning falls, for if the release of rights in the Camp Dix territory 30 was beneficial to the company or even if the new agreement of June 29th was just as favorable to it, as Mr. Hargrove testified (p. 67, l. 26), then Mr. Black made his profit not because of the release, but be-



cause he owned a majority of the stock. And this brings us to the crux of this case, namely, whether Mr. Black was guilty of a breach of trust as director.

## II

### THE DEFENDANT BLACK'S PROFIT DID NOT ARISE FROM A BREACH OF HIS DUTY AS A DIRECTOR

10

The mere fact that a director disposes of his stock at a price not made known by him to his fellow stockholders does not charge him with making a secret profit under the cases below considered. The phrase used in the cases is not "secret profit" alone, but "secret profit arising from breach of trust." The mere disposal of holdings at a profit is not enough to bring a defendant within those cases; it must also be shown that there was an accompanying act on the part of the director which lessened the value of the holdings of the remaining stockholders. In the case *sub judice* the only accompanying act was the agreement of June 29, 1917; and that agreement was, as already stated, admittedly beneficial to the company. The Vice-Chancellor says (p. 116, l. 5) "It may be assumed that the bargain was beneficial to the Farmers' Company. The testimony is to that effect." The striking inconsistency of his "conclusions" becomes evident when this statement therein is contrasted with his earlier statement that the surrender of the release was a fraud on the stockholders (p. 114, l. 30). How can it be said that the stockholders were defrauded by the release when what was substituted



for that release was admittedly beneficial to the company? Hargrove admits that the new arrangement was as good as the old one (p. 67, 1. 26). The truth is that it was much better. The Farmers Company was saved an expense of \$50,000 on equipment that could, admittedly, have been only temporarily used, namely, during the life of the cantonment.

The opinion below further holds that the transfer of the control of the company was a fraud on the stockholders. It is true the effect of Mr. Black's sale was to transfer the control of the company, but that is <sup>not</sup> ~~per se~~ fraudulent. This is recognized in *Porter v. Healy*, 91 Atl. 428, cited by the Vice-Chancellor below, for it is said at page 431:

“If the present case were merely an instance where majority stockholders disposed of their stock and honestly took advantage of the fact that they held a controlling interest in order to gain a higher price than the minority stockholders were subsequently able to secure, and who at the same time incidentally resigned their places as directors, then of course the complainants would not have a good cause of action.”

It seems to us that Black's conduct was squarely within the language above quoted. He transferred the controlling interest; and the fact that he obtained the shares of other stockholders without disclosure to them of the exact terms of his contract with the New York Telephone Company cannot fasten any liability on him, for under *Crowell v. Jackson*, *supra*, *he was under no duty to make a disclosure*.



In another Pennsylvania case cited by the Vice-Chancellor, namely, Commonwealth etc. Co. v. Seltzer, 76 Atl. 77, it is also admitted that if the "control" alone of the corporation was honestly transferred, there could be no cause of action. In that case the corporation had all its capital invested in real estate which it was willing to sell. The president led a prospective buyer to believe that the property could not be purchased. He then sold to the purchaser at a profit a controlling interest in the corporation, and the purchaser then put through an arrangement whereby it acquired the real estate. The court held that the profit derived from the sale of the stock was a necessary incident to the sale of the real estate, and that the president was liable to complainants for a proportion of the profit based on the number of shares held by complainants. The court recognized, however, that the mere transfer of control at a profit would not be fraudulent. At page 79, 2d column near bottom, it is said:

"It is quite true that the profits in the present case were made to appear on the surface as not coming from the sale of the property of the corporation; but, as all the facts show that the purchaser only wanted the real estate, *and not the control* of the franchise of the corporation, there is little or no doubt that the profits paid to the two defendants were considered by the purchaser as part of the cost of the real estate."

In the present case what the New York Telephone



Company wanted was the control of the franchise of the corporation. The Farmers Telephone Company operates in other territory besides the cantonment. Its rights in such other territory were not released. The United States Government wanted the Bell system in the cantonment (p. 68, 1. 5). The Farmers Company acceded to the wish of the Government, and the new arrangement was as beneficial to that company as if it had kept the Bell system out.

10 McClure v. Law, 161 N. Y. 78, 55 N. E. 388, also cited by the Vice-Chancellor, is not in point because there the consideration for the transfer of control was the payment of a sum of money to reimburse the offending directors for the payment of the corporation's notes to them, which were not collectible.

The great majority of decisions involving "secret profits," by directors concern contracts made by the directors with the corporation, or interests in the contracts of third persons with the corporation. There  
20 is no such question here involved; but merely the honest turning over of control of the corporation.

It cannot be gainsaid that if Mr. Black were not a director, merely a majority stockholder, and contracted to sell his majority holdings for a profit, he would be entitled to retain all the profit he could make out of the transaction. The fact that he is a director does not alter the situation unless a breach of trust is shown; that is, unless it be shown that the  
30 transfer of control was not beneficial to the corporation. The agreement of June 29th substituted for the release was admittedly beneficial. There is nothing in the case to show that the New York Telephone



Company will not act fairly with complainants, its co-stockholders. For all that appears in the case they may be able to sell their holdings at a profit. If they cannot, they are in no different case from thousands of other stockholders of corporations who are not able to secure as high a price for their stock as a fellow-stockholder holding a controlling interest.

No case will be found where the mere transfer of control accompanied by an act beneficial to the corporation has been held fraudulent. A recent case in which the facts were familiar to the case at bar is *Ryder v. Bamberger*, 158 Pac. 753, decided by the Supreme Court of California in 1916. In that case the defendants owned a majority of the stock and controlled the corporation. They entered into an arrangement with a holding company for the sale and exchange of their stock, having previously purchased plaintiff's stock at a price greater than its value. They made no disclosure to plaintiff of their relations with the holding company, in which the defendants had received stock as part of their arrangement, and subsequently that stock greatly increased in value. Plaintiffs claimed that defendants as directors had committed a breach of trust in concealing their relations with the holding company. The court held otherwise, and said:

"First, as stockholders, the defendants had a perfect right to dispose of their stock (which was all they did) without the slightest regard to the wishes and desires or knowledge of the minority stockholders; and second, that as directors they concealed nothing which plain-



tiff was entitled to know or which would have been of value to him if he had known."

Similarly, in the instant case, Black had a perfect right to dispose of his stock, including what he had acquired, without the slightest regard to the wishes of complainants. They knew he was getting a profit on the stock (p. 39, l. 30). He offered them \$65 a share. Surely, he was not obliged to pay their demand of \$150 a share (p. 39, l. 15); and surely he was not obliged, before he sold his own stock, including what he had acquired, to submit the whole transaction to them and get their approval. If such be the law, then every majority stockholder is at the mercy of even one minority stockholder if the former wishes to sell his stock at a profit.

The Vice-Chancellor in his opinion has seized on the agreement of June 29th as being a "plum" that the New York Telephone Company was coveting. That agreement had no such importance in the minds of the stockholders and directors at their various meetings. As will appear from Secretary Hargrove's testimony, the objection of the stockholders was not aimed at the agreement, but at the fact that Black was getting a profit from the sale of the stock (p. 63, ls. 1-10).

The decisions cited by the Vice-Chancellor all involve cases where suit was brought by stockholders who had parted with their stock. The books will be searched in vain for a precedent where recovery of alleged secret profits was allowed in favor of minority stockholders who had not parted with their stock. No case will be found where a director controlling a



majority of stock was deprived of his profit merely because he refused to pay a minority stockholder an exorbitant price for his holdings.

If the agreement of July 2, 1917, be analyzed, it will be found to be merely for a sale to the New York Telephone Company of Black's holdings and such holdings as he might afterwards acquire. The sum of \$45,000 to be paid to Black at the end of a year was retained as an assurance that the New York Telephone Company should receive the stock free from<sup>10</sup> obligation, with assets undiminished, and with the approval of the Board of Public Utility Commissioners. This approval, by the way, was secured (p. 109, 1. 35-40). Likewise, in case Black transferred more than 55 per cent, but less than all the stock the rates per share specified in the Fourth clause of the agreement were to be paid him, but the amount thereof was to be retained until the expiration of the year, for the same reasons.

The contract with Black was really an instalment<sup>20</sup> contract. The New York Telephone Company, to make sure that it was not buying a "pig in a poke," retained a percentage of the purchase price until one year after the date of the agreement, to make sure that in the meantime nothing should be done to diminish the value of the stock it was buying.

The agreement of July 2, 1917, cannot be considered as working a fraud either on the Farmers Telephone Company or the complainants. All Black agreed to<sup>30</sup> do was to turn over stock which he then owned or might thereafter acquire. True, the transfer was made on certain conditions, but those conditions did



not involve any action on his part. The conditions and covenants were in effect a warranty that nothing should be done in the interval between the making of the agreement and its consummation which might depreciate the value of the stock. The conditions and covenants were, relatively, as beneficial to the complainants as to the New York Telephone Company. They were as well interested as that Company in seeing that the liabilities should not be increased; that  
10 there should be no increase in the capital stock or change in the then "present" rights of the stockholders; that the books and accounts should be kept as required by law, and that the property of the company should be diligently preserved and maintained. The condition that no dividend should be declared and no property disposed of was in no way binding upon the Farmers Telephone Company, nor did Black make any affirmative agreement in that behalf. The two conditions affected only the respective inter-  
20 ests of Black and the New York Telephone Company, if in the interval between the date of the agreement and its consummation a dividend should be declared or property should be disposed of, either of which happenings would, of course, lessen the value of the stock it was purchasing. If either contingency arose, the New York Telephone Company would have the remedy on breach of warranty. Sales Act, Comp, Stat., p. 4663, pl. 69. There was nothing in any of the  
30 conditions or warranties which adversely affected the interest of the stockholders whose shares were not purchased by the New York Telephone Company.

The position of the complainants as minority stock-



holders is no worse now than it was before a majority of the stock was transferred to the New York Telephone Company. It is really better, for if the Farmers Telephone Company had not entered into the agreement of June 29th and had been put to an outlay of \$50,000 for the Camp Dix telephone system, it would now find itself, the war being ended with a telephone system and equipment from which little revenue would be derived. It goes without saying<sup>10</sup> that with the close of the war instead of 60,000 men at Camp Dix there would be only a regiment. Complainants have had the benefit of the revenue accruing to the Farmers Company under the agreement of June 29th without a cent of outlay for equipment. One advantage complainants have not received, namely, they have not been able to "hold up" Mr. Black for \$150 a share for their stock; but they have accomplished, if the decree below is sustained, by judicial means what they could not accomplish by bargaining; they become entitled to about \$15 a share<sup>20</sup> above par for their stock. They get this profit without being obliged to part with their stock. Here, if ever, is a case where one can both "eat his cake and keep it."

There is nothing in the case to warrant a decree fixing the entire amount of Black's profit as the measure of his liability. Under the decree he is entitled only to par for his stock. For his services in consummating the beneficial arrangement of June 29th with<sup>30</sup> the New York Telephone Company, he gets nothing. The right to trade freely in his own stock is denied him; and yet that right is fully recognized in the cases



cited under point I, of this brief.

Because Mr. Black refused to pay Keely \$150 a share he is now compelled to turn \$28,635 into the treasury of the Farmers Telephone Company. This penalty is visited upon him after serving many years without compensation as president of the company and after meeting its financial emergencies for fifteen years. To state this proposition is to show its injustice.

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If active fraud had been shown as against the stockholders whose holdings Black acquired and they had joined in the bill in this cause, there would be some foundation for the decree below; but none such are complaining. Therefore, it must be assumed that when Black acquired their holdings he lawfully became the owner of a majority of the stock. He had a perfect right to sell that stock to whom he pleased. He did sell it, and the fact that at the same time the release agreement was made with the New York Telephone Company surely did not work a fraud on complainants for it was beneficial to the company and consequently to them. It is axiomatic that there can be no fraud without damage. It is settled by the cases already cited that the mere transfer of control is not *per se* fraudulent. The only other element in the case is the release agreement. Admittedly, that agreement was beneficial to the company and to the complainants. They will get their share of the profit

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from it. If they are not damaged by this element in the case, it follows that their bill presents no case for relief.



## III

THE DECREE BELOW, IF NOT REVERSED, SHOULD BE MODIFIED TO REQUIRE BLACK TO ACCOUNT TO THE COMPLAINANTS FOR ONLY THE PROPORTION OF PROFIT THAT THEIR HOLDINGS BEAR TO THE TOTAL CAPITALIZATION.

This was the relief given in *Porter v. Healy, supra*,<sup>10</sup> which was cited by the Vice-Chancellor. In that case the court determined that the "defendant would have to pay each of the plaintiffs a share of the \$86,830" (the profit) "proportionate to their respective holdings of stock." (91 Atl., p. 431, 1st column bottom). Likewise, in *Commonwealth Trust Co. v Seltzer, supra*, also cited by the Vice-Chancellor, it was held "that the president and director maybe compelled to refund to the other stockholders their proportionate share of the profits." The decree below is clearly erroneous<sup>20</sup> in requiring all the profit to be turned over to the company. Complainants are surely not entitled to all the profit. If not, then the majority stockholder the New York Telephone Company, is put in the anomalous position of getting back most of the consideration it paid for its present holdings.

## IV

## COSTS AND COUNSEL FEE.

If the decree below be reversed, of course the costs



and counsel fee allowed will fall with it. If, however, the decree be modified as pointed out in Point III then it is submitted that an allowance of \$500 counsel fee on a recovery of less than \$1200 is altogether too large.

THE DECREE BELOW SHOULD BE REVERSED.

Harold B. Wells  
atly for Defendant  
appellant.



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James A. Thompson  
City of New York  
April 1881







1920  
New Jersey Court of Errors and Appeals.

Between

ROBERT N. KEELEY and GEORGE  
PFEIFFER, JR.,

*Complainants-Respondents,*

and

HENRY M. BLACK,

*Defendant-Appellant,*

FARMERS TELEPHONE COMPANY  
and NEW YORK TELEPHONE COM-  
PANY,

*Defendants-Respondents.*

On Appeal  
from  
Chancery.

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**MEMORANDUM FOR RESPONDENT**

***New York Telephone Company.***

The respondent New York Telephone Company (hereinafter referred to as the New York Company) submits this memorandum solely with view to a clear presentation of the facts relative to the relations existing between it and the Farmers' Telephone Company (hereinafter referred to as the Farmers' Company), the necessity for and the purpose and effect of the supplemental agreement, dated June 29, 1917, between The Delaware and Atlantic Telegraph and Telephone Company (hereinafter referred to as the Delaware Company), the New York Company and the Farmers' Company, and the purpose and effect of the subsequent agreement, dated July 2, 1917, between the defendant, Henry M. Black, the New York Company and the Delaware Company.

In June 1917, there were in force and had been

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in force for a period of years between the Delaware Company and the New York Company (known as the "Bell Companies") and the Farmers' Company certain so-called "sublicense" agreements and letters traffic ("Exhibits C-5, C-2, C-3, C-4, and C-6", introduced in evidence at pages 51-52), *the consideration for which was the nominal sum of \$1.00 and the mutual covenants and agreements therein contained.* Under these agreements the Delaware Company and the New York Company connected their lines with those of the Farmers' Company (within the territory therein defined) and interchanged traffic with the Farmers' Company. These contracts, it should be noted, had been in force for a period of years and had been entered into by the officers of the Farmers' Company without, of course, being submitted to its stockholders (p. 61, ll. 20-34). The area which was, in June, 1917, being developed by the United States government into the Wrightstown cantonment, or Camp Dix (p. 50, ll. 24-39; p. 51, ll. 1-9) *was but a small part* of the territory specified in said contracts for the operations of the Farmers' Company.

The establishment and extensive development of the Wrightstown cantonment by the government and the necessity for the utmost speed and efficiency in all agencies necessary in the prosecution of the war are matters of too recent history to require extended comment.

The Farmers' Company at first considered furnishing its telephone service in the cantonment (p. 52, ll. 30-38; p. 53, ll. 5-20). Later, when it developed that the construction necessary for adequate telephone service in the cantonment would require an expenditure for additional plant of more than \$50,000 (a sum largely in excess of the unexpended capital possessed by the Farmers' Company), the Board of Directors of the Far-



mers' Company concluded that it would not be a paying proposition, especially in view of the temporary nature of the cantonment (p. 67, ll. 10-20).

Furthermore, early in June, 1917, it was an "open secret" that the government wanted the service of the Bell Companies in the cantonment, and that these companies, at the behest of the government, would be obliged (either with the consent of the Farmers' Company or without it, if refused) to construct their own plant in the cantonment to meet the governmental requirements (p. 68, ll. 3-6; p. 54, ll. 5, 28-32; p. 108, ll. 17-19; p. 72, ll. 22-26). 10

This respondent has no doubt that, under the circumstances, it would have been pardoned had it proceeded without ceremony to meet the governmental requirements; happily, however, the Farmers' Company consented, by the agreement dated June 29, 1917 (Exhibit A, p. 8, introduced in evidence at p 52, l. 7, and marked "Exhibit C-7"), to the Delaware Company and the New York Company constructing their lines and furnishing their service within the cantonment area. This arrangement was no secret at all; it was generally known to the Executive Committee, the Board of Directors and the stockholders of the Farmers' Company as early as June, 1917 (p. 106, ll. 28-38; p. 103, ll. 10-39; p. 104, ll. 1-15; p. 63, ll. 1-16). 20 30

This supplemental agreement, which released only the relatively small cantonment area and reserved to the Farmers' Company the remainder of its sub-licensed territory, recited and provided in part as follows:

"Whereas, in order to furnish adequate telephone service at the proposed United States Army cantonment and environs, about to be established at or near Wrightstown, New Jersey, the construction of new and additional 40



telephone lines, plant and equipment and the reconstruction of existing lines will be required, which, with their maintenance and operation will cost *in excess of* fifty thousand dollars (\$50,000); and

10 "Whereas, in view of the fact that such cantonment is to be especially established to meet the necessities of the United States government in the present war and owing to the uncertainty of the continuance of such cantonment, the Farmers' Telephone Company does not feel warranted in incurring the aforesaid expenditures and the Bell Companies are willing to assume the furnishing of such service and to that end it is mutually desired by the parties hereto that certain changes, as by this agreement provided, be made in the above mentioned Agreements and 'Traffic Letters';

\* \* \* \* \*

20 "Second: The Territory covered by the Original Agreement and Supplementary Agreements and 'Traffic Letters' shall be and hereby is modified so as to release and exclude therefrom that within the proposed United States army cantonment, and its environs, contemplated to be or which may hereafter be established at or near Wrightstown, New Jersey.

30 "Third: The Farmers' Company hereby consents to the furnishing by the Delaware Company and the New York Company, or either or both of them, of telephone service within the territory released and excluded as aforesaid, and hereby releases and discharges the Delaware Company and the New York Company severally from any further obligation under or by virtue of the Agreements and 'Traffic Letters' aforesaid with respect to the territory so released and excluded except so far as said territory hereby becomes part of the territory operated by the Delaware Company and the New York Company or either or both of them.

40 "Fourth: The Farmers' Company hereby grants to the Bell Companies, or either or both of them, the right to use its poles, lines,



plant and equipment within the territory so released, *at the usual rental or attachment charges therefor*, with the right, at their own cost and expense, to relocate, replace and reconstruct, as they may from time to time find necessary or expedient, any of the poles, cross-arms or fixtures of the Farmers' Company within the territory so released; *any such poles, upon their replacement as above provided, shall become the property of the Farmers' Company* and thereafter the Bell Companies, and either and both of them, shall have the right permanently to use such poles without the payment of any rental or attachment charges therefor. 10

*"Fifth:* The Farmers' Company shall receive upon any and all toll or long distance messages originating on the lines of the Bell Companies or either of them, within the territory released as aforesaid, during the first year following the opening of said cantonment and the establishment of service by the Bell Companies or either or both of them through permanent boards, a sum equal to five per cent. (5%) of such toll or long distance messages (not exceeding, however, five cents—5¢—on any one message) and thereafter, after the expiration of the first year, a sum equal to ten per cent. (10%) of such toll or long distance messages (not exceeding, however, ten cents—10¢—on any one message)."*"* 20

It is admitted that under this Supplemental Agreement of June 29, 1917, the Farmers' Company derived, by way of commissions paid to it by the Delaware Company and the New York Company on the business flowing into and out of the Cantonment, profits greater than it would have obtained had it itself constructed and operated the lines in the Cantonment, and that, in view of the temporary nature of the Cantonment the Board of Directors of the Farmers' Company were of the unanimous opinion that it would not pay the Farmers' Company to construct the 30 40



necessary plant and furnish service in the Cantonment (p. 67, ll. 10-34).

10 Although executed by Mr. Black, as President of the Farmers' Company, the Board of Directors of that Company, at the July 11, 1917, meeting of the Board, ratified the agreement (p. 70, ll. 10-39); it, as well as the Original Traffic Contracts (which it supplements) were entered into by the officers of the Company, without any formal action being taken thereon by the stockholders (p. 56, ll. 34-37; p. 61, ll. 21-34; p. 63) and it is respectfully submitted that such action by the stockholders is not necessary under the law.

In connection with this act of ratification by the Board of Directors of the Farmers' Company, particular attention is called to the following testimony of the complainants' witness, Mr. Hargrove:

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(P. 47, ll. 1-16) "Q. Could you name the Board of Directors of that (the Farmers') Company?

\* \* \* \*

"A. Henry M. Black, J. M. Lamb, George L. Shinn, Robert T. Woodward, George A. Woodward, Walter E. Borden, Pashley Malsbury, William H. Reeves, Walter T. Cox and myself (M. Warner Hargrove), and W. A. Shreve was a director and resigned in September, about, 1918.

30 "Q. Who were the directors of this company in the year 1917? A. The same names I have named.

"Q. With Mr. Shreve? A. With Mr. Shreve.

"Q. And they were directors in 1916? A. They were.

(P. 62) "Q. And this Board of Directors is made up of the very best men in Burlington County? A. Yes.

"Q. That is correct? A. Yes; and Monmouth and Ocean, too.

(P. 63, ll. 34-39) "Q. In June, 1918, wasn't this same board, including Mr. Black, re-elected? A. Yes.

40 "Q. And didn't Mr. Pfeiffer, one of the



complainants, nominate this very board; wasn't it at his nomination that this very Board was elected? (p. 64, ll. 1-2) A. I think so; I think Mr. Black asked Mr. Pfeiffer if he would nominate *him*, and he did.

\* \* \* \*

(P. 64, ll. 10-17) "Q. Mr. Hargrove, through the administration of the affairs of this Company was this Board dominated by Mr. Black and compelled to do things they didn't want to do in their own discretion? A. Not to my knowledge. 10

"Q. *Then it wasn't ever, in any sense, a dummy board, was it?* A. No, sir."

The above testimony, and bearing in mind that Messrs. Hargrove, Shinn, Lamb, Reeves, R. T. Woodward and G. A. Woodward were all witnesses for the complainants, it is submitted, throws the proper light on the following testimony of the same witness, Mr. Hargrove, elicited on re-direct examination: 20

(P. 71, ll. 4-8) "Q. Then the Board of Directors who ratified that agreement was a dummy board, wasn't it? A. Yes; we considered ourselves so; we thought we might as well do it anyhow; Mr. Black had all the stock."

And, further, be it noted, that these gentlemen, after having sold or agreeing to sell to Mr. Black their holdings in the Farmers' Company, and after delivering to him all their stock other than a share or two to qualify them as directors, refused (as late as September, 1918, and after the New York Company had acquired and had had transferred, with the consent of the Public Utility Commissioners of the State of New Jersey, to its name, 1908 out of the total of 2,000 shares of the stock of the Farmers' Company) to resign at the request of Mr. Black (p. 85, from l. 6 to p. 89, l. 27; p. 109, ll. 35-38). The reasons for such refusal, as testified to by complainants' witness Mr. Lamb, were (p. 94, ll. 18-38) as follows: 30 40



"Q. Would you tell the Court why at this meeting of September, 1918, the directors did not resign as they agreed to do? A. It was because we understood that Mr. Black had made an agreement with Mr. Hargrove that had not been fulfilled, and we refused to resign until he settled with Mr. Hargrove.

10 "Q. *So that your refusal to resign had nothing to do with your considering the traffic agreement entered into between the Farmers' Telephone Company and the New York Telephone Company, as being to the advantage or not of the company?* A. No; I think we all would resign on September 23, if Mr. Black had paid the \$1,500 which Mr. Hargrove said he owed him, and paid the directors and their wives the five dollars.

20 "Q. At this meeting the representatives of the New York Telephone Company came down to qualify as the new directors? A. They didn't tell me, but that was my supposition they were there."

Turning, now, to the agreement of July 2, 1917 (Exhibit B, p. 12, introduced in evidence at page 106, l. 12, and marked "Exhibit C-11") entered into between Mr. Black and the New York Company and the Delaware Company, it should be noted, first, that this agreement was entered into *after* the Supplemental Agreement of June 29, 1917, had already been executed (although before its ratification by the directors of the Farmers' Company on July 11, 1917) and *after* 30 it was known that the New York Company would go into the Cantonment area (p. 70, ll. 17-19; p. 72, ll. 22-26).

This agreement of July 2, 1917, it will be seen, is in reality in two parts, the First Part for the purchase of 55% of the stock, at \$50 a share, and the Second Part for the purchase of any or all of the remaining stock on an upward sliding scale of prices.

40 As to the First Part: Mr. Black represented, among other things, that he was, on July 2,



1917, the "holder and owner of at least fifty-five per cent. (55%)" of the stock of the Farmers' Company (i. e., of 1100 shares); these holdings the Bell Companies agreed, *at a date not later than August 1, 1917*, to buy and pay for at the rate of \$50 a share, or \$55,000, *provided*, firstly: that the Farmers' Company had *duly* released the Cantonment area, and, secondly: that the Public Utility Commissioners of the State of New Jersey had consented to the transfer of these shares to the Bell Companies (section "FIRST" of the agreement). Subsequently both of these conditions were met (as to ratification of the release by the directors of the Farmers' Company, see p. 70, ll. 10-39, and as to such consent of Public Utility Commissioners, see p. 109, ll. 35-38). Thereupon the obligation on the part of the Bell Companies to purchase the 55% stock holdings of Mr. Black became absolute, even though the Bell Companies might, by reason of the failure of any of the other representations made by Mr. Black, have had a cause of action against him. The acquisition of these 1100 shares (55% of the total outstanding stock) on or before August 1, 1917, would be a consummation of the First Part of the Agreement; it would result in the control of the Farmers' Company passing to the Bell Companies, and would permit them to supervise and directly co-ordinate the operations of the Farmers' Company with those of their own systems, including the Wrightstown Cantonment. To achieve this it agreed to pay Mr. Black only the sum of \$50 per share; this should demonstrate that it attached no special value to the release of the Cantonment area by the Farmers' Company, and should, it is submitted, be convincing on the point that such release was not the inducing reason for the price at which they agreed to purchase any shares in excess of the 55% which Mr. Black

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might tender under the Second Part of the agreement.

As to the Second Part: In this the Bell Companies agreed, on an upward sliding scale of prices, to purchase any stock of the Farmers' Company in excess of the 55% covered by the First Part of the agreement, which Mr. Black  
 10 might tender, *provided only, however*, if the following conditions precedent (briefly stated) exist:

A. The Farmers' Company was a duly incorporated company;

B. The stock of the Company is 2,000 shares of the par value of \$50 each;

C. The Company has good title to its property, free from encumbrances;

20 D. The structural value of the Company's plant is not less than \$145,000;

E. The obligations of the Company (other than capital stock) do not exceed \$5,000 on or after the date of the agreement and at the time of the transfer of the stock shall not exceed the aggregate amount of its current assets;

F. The capital stock has not been increased;

G. The entire 2,000 shares of its capital were duly issued and are fully paid;

30 H. The books and accounts of the Company are kept as required by the Public Utility Commissioners of the State of New Jersey;

I. No dividend has been declared or paid;

J. No property has been disposed of;

K. The property is diligently preserved, maintained and operated.

Some of the foregoing conditions precedent, it will be noted, are likewise representations of fact made by Mr. Black in the agreement; they are, it  
 40 is submitted, all provisions necessary and proper for the protection of a vendee under a conditional



contract for the future purchase of the stock of a corporation, and in connection with the provision regarding the non-payment of dividends, it should be noted, first; that the Second Part of the agreement continued only for a period of one year, and second: that neither this provision nor any of the other provisions of the agreement were binding upon the Farmers' Company; obviously, the sole intent was to permit the Bell Companies to refuse to purchase any of the remaining 45% of the stock if, in its opinion, the payment of a dividend reduced the value of the stock which they had agreed to purchase. 10

The Second Part of this agreement amounts simply to this: that the Bell Companies undertook, at a certain price, to purchase *from an individual* who was then already a stockholder and who happened to be the President and a director of the Farmers' Company, the remaining 45% of the *outstanding* stock of the Farmers' Company, *provided the affairs of the Company were in a certain condition—otherwise they were not obliged to purchase.* It is evident that the amount above \$50 per share was what the Bell Companies were willing to pay on account of the expenses and labors (reference to which is made throughout the testimony) necessary to gather in these remaining shares. 20

Respectfully submitted, 30

DAVID A. NEWTON,  
Of Counsel with Respondent  
New York Telephone Company.

CARL M. ABROMEIT,  
Solicitor of said respondent.







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