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New Jersey Court of Errors and Appeals

(Filed April 27, 1917.)

Between NEPTUNE MILDEW AND WATER- PROOFING COMPANY, Complainant-Appellant, and CENTRAL RAILROAD COMPANY OF NEW JERSEY, Defendant-Appellee.	}	On Decree in Chancery.	20
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Petition of Appeal

To the Honorable The Court of Errors and Appeals in the last resort in all causes.

The petition of petitioner, Neptune Mildew and Waterproofing Company, the appellant in the above stated cause, shows, that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor, bearing date the 29th day

Petition of Appeal

10 of March, in the year 1917, wherein the said Central Railroad Company of New Jersey was defendant, in this respect, towit: that the said decree adjudges that the bill of complaint of complainant be dismissed and that defendant have costs and a counsel fee of one hundred dollars to be taxed with said costs. And your petitioner humbly appeals from that part of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, contrary to the evidence and contrary to equity and good conscience.

20 Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

A. P. BACHMAN,
Solicitor and of counsel with
Complainant-Appellant.

Answer to Petition of Appeal

(Filed June 15, 1917.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
 NEPTUNE MILDEW AND WATER-
 PROOFING COMPANY,
 Complainant-Appellant,
 and
 CENTRAL RAILROAD COMPANY OF
 NEW JERSEY,
 Defendant-Respondent.

10

The answer of the above named respondent to the petition of appeal of the above named appellant.

20

The respondent, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the twenty-ninth day of March last past, made and entered in the Court of Chancery, in a cause for that purpose mentioned in said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and prays that the same may be affirmed with costs to be adjudged to this respondent.

30

FRANCIS LAFFERTY,
 Solicitor of and Counsel with Respondent.

40

Notice of Appeal

(Filed April 9, 1917.)

IN CHANCERY OF NEW JERSEY

10	Between	}
	NEPTUNE MILDEW AND WATER-	
	PROOFING COMPANY,	
	Complainant,	
	and	
	CENTRAL RAILROAD COMPANY OF	
	NEW JERSEY,	
	Defendant.	

20 The complainant hereby appeals from the final decree made in this Court in the above stated cause and from each and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

A. P. BACHMAN,

Solicitor and of counsel with complainant.

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

A. P. BACHMAN,

Of Counsel with Complainant.

30

Final Decree*(Filed, March 30, 1917.)*

IN CHANCERY OF NEW JERSEY

Between NEPTUNE MILDEW AND WATER- PROOFING COMPANY, <p style="text-align: center;">Complainant,</p> and CENTRAL RAILROAD COMPANY OF NEW JERSEY, <p style="text-align: center;">Defendant.</p>	} On Bill, etc.	10
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This cause coming on to be heard at the Chan-
 cery Chambers in the City of Newark, in the pres-
 ence of A. P. Bachman, of counsel with the com- 20
 plainant, and Louis Hood and Francis Lafferty,
 of counsel with the defendant, and the pleadings
 having been read and the proofs taken, and the
 arguments of the respective counsel having been
 heard and considered, and the said Court having
 duly considered said pleadings, proofs and argu-
 ments, and it appearing to the Court that the
 complainant is not entitled to the relief sought
 and prayed for by it in its bill of complaint;

It is, on this 29th day of March, Nineteen Hun- 30
 dred and Seventeen, by Edwin Robert Walker,
 Chancellor of the State of New Jersey, ordered,
 adjudged and decreed that the complainant's bill
 be and the same is hereby dismissed with costs

And it is further ordered that a counsel fee of
 One Hundred Dollars be and the same hereby is
 allowed the solicitor of the defendant, to be taxed
 in the defendant's costs against complainant.

Respectfully advised,
 E. R. WALKER,
 C.

Merritt Lane,
 V. C.

5

Amended Bill of Complaint

(Filed, May 24, 1916.)

IN CHANCERY OF NEW JERSEY

10 Between
NEPTUNE MILDEW AND WATER-
PROOFING COMPANY,
Complainant,
and
CENTRAL RAILROAD COMPANY OF
NEW JERSEY,
Defendant.

20 *To the Honorable Edwin Robert Walker, Chan-
cellor of the State of New Jersey:*

The complainant, Neptune Mildew and Water-
proofing Company, of No. 1 Exchange Place, Jer-
sey City, respectfully shows that:

30 1. Complainant is a business corporation, duly
organized under the Laws of 1896 and the acts
amendatory of and supplemental to same, and
was such at all the times hereinafter stated; and
now is such corporation.

2. Defendant at all the times hereinafter stated
was and now is a railroad corporation duly organ-
ized under the laws of the State of New Jersey.

3. Complainant was organized in 1899 with a
paid-up capital of \$2000, divided into 200 shares
of a par value of \$10 each, for which certificates
of stock were duly issued; such stock was fully
paid up and issued for full value and the capital
of complainant has ever since been \$2000.

40 4. Of such full paid stock 100 shares were any

Amended Bill of Complaint

issued to Lynton S. McNeal and the latter thereafter duly assigned same to Frank W. McNeal, who presented same to complainant for transfer on or about January 7th, 1902, complainant duly issued its certificates numbered 8 and 9 for 50 shares each to said Frank W. McNeal, delivering such new certificates to said Frank W. McNeal and cancelling the old certificates. 10

5. Said Frank W. McNeal was on said January 7th, 1902, duly elected a director of complainant and its Secretary and Treasurer, and has continued as such ever since.

6. Said Frank W. McNeal since said January 7th, 1902, has been and now is the lawful holder and owner of said 100 shares of the capital stock of complainant corporation, constituting one-half of the entire issue of said capital stock. 20

7. On or about April 2d, 1913, while said McNeal was absent from town, certain persons consisting of one Rudolph Puhlman and others, and without notice to and without the knowledge or consent of said McNeal, either actual or constructive, fraudulently assumed to be the Board of Directors of complainant and as such authorized, executed and delivered to defendant a paper purporting to be a deed of the real property hereinafter described, which deed was recorded in the office of the Register of Hudson County in Liber 1149, page 419, on or about April 3rd, 1913. 30

8. Such real property was the only asset of complainant.

9. Such fraudulent Board of Directors had no authority to execute or deliver such real property and such deed was not executed by the lawful officers of complainant. 40

Amended Bill of Complaint

10 10. Said Puhlman and the certain others who aided in the fraudulent acts stated, knew of the existence of the 100 shares of capital stock of complainant held and owned by said Frank W. McNeal, and the stock book of complainant contained not only the cancelled certificates which had been issued to and assigned by Lynton S. McNeal, but also the stubs showing issue to said Frank W. McNeal of the 100 shares now owned and held by said Frank W. McNeal.

20 11. Said Frank W. McNeal, although a lawfully elected director of complainant and the owner and holder of one-half of its capital stock, received no notice of a certain alleged meeting on March 6th, 1913, of stockholders or directors of complainant, which resulted in the fraudulent authorization, execution and delivery of the deed aforesaid, and complainant alleges that no lawful meeting of its stockholders or its directors was ever held for that purpose.

30 12. Said Frank W. McNeal did not directly or indirectly consent to or acquiesce in the said fraudulent execution and delivery, and at all the times held such one-half of the capital stock of complainant in his own hands, without pledge of same for any purpose, without giving proxy to another to vote same and without knowledge on his part that any meeting of directors or stockholders had been had or intended to be had for the purpose of authorizing such deed or in any way disposing of complainant's sole asset, until after same had been partially consummated; and immediately upon his learning of such partial
40 consummation said McNeal in writing notified de-

Amended Bill of Complaint

defendant corporation that such deed was made without lawful right and was a fraud upon the rights of complainant and said Frank W. McNeal.

13. Defendant could have refused to fully consummate the transaction, but took possession of said real property and has ever since retained such possession with full knowledge of the claim of fraud and irregularity, and permitted the transaction with such knowledge to be fully consummated. 10

14. On information and belief, defendant has paid or caused to be paid certain taxes and other charges upon said real property which payments complainant hereby offers to have made a lien on said real property and as offset against the claim for rental herein sought to be enforced. 20

15. Complainant never received the consideration expressed in said deed, or any consideration whatever for its execution and delivery; although those who had unlawfully claimed to and did exercise the authority to so execute and deliver said deed to defendant, both as directors and officers, unlawfully received and disbursed what purported to be a consideration for such deed, not, however, for the benefit of complainant, but in fraud of its rights; such receipt and disbursement could have been stopped by defendant if it had acted immediately upon receipt of the claim of fraud and irregularity aforesaid. 30

16. Complainant, under a claim by those antagonistic to said Frank W. McNeal, was deadlocked and said Frank W. McNeal instituted man- 40

Amended Bill of Complaint

damus proceedings in the New Jersey Supreme Court for the purpose of compelling complainant's usurping officers to recognize the stock of said Frank W. McNeal, and while said proceedings were pending, those claiming to own the stock of complainant corporation, conceded the claim of said Frank W. McNeal and a meeting of the lawful stockholders held on the 18th day of March, 1916, on which date, for the first time since April 3, 1913, it was possible to hold a meeting of the lawful stockholders, and complainant's officers were directed to institute proceedings as they might deem best to recover the real property aforesaid, now in the hands of defendant corporation and exact a proper and just rental for same during the occupancy of defendant.

17. The real property covered by said deed, theretofore and now owned by complainant and now occupied by defendant, is described as follows:

All those three certain lots, tracts or parcels of land and premises situated, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, described on a map entitled "Map of desirable lots for sale, being a portion of the Arbuckle Estate, Jersey City, New Jersey," filed in the office of the Register of Hudson County, and known as lots numbered 15, 16 and 17, on the northeast side of Oliver Avenue, in Block number 480, each of said lots being 25 feet wide front and rear and 100 feet in depth on each side.

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

1. That a decree be made setting aside the deed of April 2nd, 1913, purporting to be executed by

Amended Bill of Complaint

complainant to defendant, as fraudulent, and requiring defendant to vacate the premises therein described and restore same to complainant.

2. That defendant be required to account to complainant for the fair and reasonable rental of said premises from the said April 2nd, 1913, (less such payments properly made by defendant, for taxes at the time of taking over the deed) to the date of the determination of this action. 10

3. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint (not, however, under oath) and to abide by such decree as this Court may make in the premises.

NEPTUNE MILDEW AND
WATERPROOFING COMPANY,
by Frank W. McNeal,
Secretary and Treasurer,
Complainant. 20

A. P. BACHMAN,
Solicitor and of Counsel with
Complainant.

State of New Jersey, }
County of Essex, } ss:

FRANK W. McNEAL, being duly sworn, on his oath deposes and says, that he is the Secretary and Treasurer of complainant corporation; that he has read the foregoing amended bill of complaint and knows the contents thereof and that same is true to the best of his knowledge, information and belief. 30

FRANK W. McNEAL.

Subscribed and sworn to before
me this 22d day of May, 1916.

Edward M. Lally,
Master in Chancery of New Jersey. 40

Answer of Defendant*(Filed, June 12, 1916.)*

IN CHANCERY OF NEW JERSEY

10	Between NEPTUNE MILDEW AND WATER- PROOFING COMPANY, <p style="text-align: center;">Complainant,</p> and CENTRAL RAILROAD COMPANY OF NEW JERSEY, <p style="text-align: center;">Defendant.</p>	}	On Amended Bill &c.
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20 The Central Railroad Company of New Jersey answering the amended bill of Neptune Mildew Waterproofing Company, paragraph by paragraph, says:

1. That it admits paragraph 1 of the amended bill.

2. That it admits paragraph 2 of the amended bill.

30 3. That it does not know and has no information from which to form a belief as to the truth of the allegations contained in paragraph 3 of the amended bill and leaves the complainant to make such proof thereof as it may deem advisable.

4. That it admits that one hundred shares of the capital stock of the complainant corporation were duly issued to Lynton S. McNeal, but it denies that said Lynton S. McNeal "thereafter duly assigned the same to Frank W. McNeal who pre-
 10 sented same to complainant for transfer and on

Answer of Defendant

or about January 7, 1902, complainant duly issued its certificates Number 8 and 9 for fifty shares each to said Frank W. McNeal, delivering such new certificates to said Frank W. McNeal and cancelling the old certificates" and says that it is informed in such manner that it believes it to be true and therefore charges the facts to be that if said Frank W. McNeal has in his possession what purports to be one hundred shares of the capital stock of the complainant corporation, or any other number of shares, that the same were not duly issued by the complainant and that such stock is not the stock of the complainant corporation. 10

5. Upon information and belief it denies that Frank W. McNeal was on January 7, 1912, duly elected a director of the complainant and its secretary and treasurer and that he has continued as such ever since and says that he was not a director or secretary and treasurer of the complainant on April 2, 1913, the date of the deed from complainant to this defendant or on March 6, 1913, the date of the meeting of the Board of Directors and also the meeting of the stockholders, the first of which authorized and the last of which ratified the sale of the land described in complainant's bill to this defendant. 20 30

6. That it denies paragraph 6 of the amended bill.

7. That it admits paragraph 7 of the complainant's amended bill except that part thereof which alleges that Rudolph Puhlman and others "fraudulently assumed to be the board of directors of complainant" and this defendant says that Ru- 40

Answer of Defendant

dolph Puhlman and other persons who participated on March 6, 1913, in the meeting of the board of directors were in fact all the directors of the complainant and as such authorized the execution and delivery to the defendant of the deed for the real property described in the complainant's bill, which deed was recorded in the office of the Register of Hudson County in Liber 1149 of Deeds for said County, page 419, on or about April 3, 1913.

8. That it does not know and has no information from which to form a belief as to whether or not the real property described in complainant's bill was the only asset of the complainant, but it says that said real property was incidental only to the purpose for which the complainant corporation was incorporated.

9. That it denies paragraph 9 of the complainant's amended bill and says that the board of directors which authorized the execution and delivery of said deed to this defendant was the lawful board of directors of said corporation, and that the deed was executed under the corporate seal of the complainant corporation by its president and attested by its secretary, and that said deed had endorsed thereon an affidavit of Maxwell Wagner the then secretary, to the effect that he was the secretary of the complainant, that the seal affixed to said deed was the corporate seal of the complainant, that it was so affixed by order of said complainant, that Rudolph Puhlman was the then president of the complainant, that he saw the said Rudolph Puhlman as such president sign the said deed and heard him declare that he signed, sealed

Answer of Defendant

and delivered the same as the voluntary act and deed of the complainant, by its order, and that deponent signed his name thereto at the same time as attesting witness.

10. That it denies paragraph 10 of the amended bill. 10

11. Upon information and belief it denies paragraph 11 of the amended bill and says that said Frank W. McNeal was not on March 6, 1913, a director of the complainant or the holder of one-half of its capital stock and was, therefore, entitled to no notice of the meeting of the board of directors of the complainant corporation.

12. That it denies that the deed referred to in paragraph 12 of the amended bill was fraudu- 20
lently executed and delivered and it again denies that said Frank W. McNeal was the holder of one-half of the capital stock of complainant and it denies that "immediately upon his learning of such partial consummation said McNeal in writing notified the defendant corporation that such deed was made without lawful right and was a fraud upon the rights of complainant and said Frank W. McNeal." This defendant says that since said Frank W. McNeal, who appears to be the only ag- 30
grieved person, had knowledge of the proposed conveyance to this defendant before its actual consummation and since he took no legal action to restrain the conveyance and thereby permitted this defendant to part with its money, said complainant and McNeal are estopped from impeaching the transaction.

13. That it denies paragraph 13 of the amended bill. 40

Answer of Defendant

14. That it admits paragraph 14 of the amended bill.

15. Answering paragraph 15 of the amended bill it says that it purchased the property described in said bill for the sum of \$5000; that there
10 was at that time a mortgage upon said property of \$1000, upon which there was interest due amounting to \$30, taxes for the years 1903 to 1912, both inclusive, and assessments amounting to \$766.13 and water rent amounting to \$196.45 and that it paid for recording deeds and other instruments the sum of \$12, making a total charge against said property of \$2004.58 and leaving a balance of \$2995.42, which amount was paid to the complainant by check of the Fidelity Trust Com-
20 pany to the order of the Neptune Mildew Waterproofing Company and which check was deposited as appears by the endorsement thereon to the credit of complainant in the Roseville Trust Company. Upon information and belief this defendant says that the said fund except such part thereof as has been lost by the failure of the Roseville Trust Company and the amount taken therefrom upon an execution, still remains in the Mutual Bank of Roseville, the successor to the Roseville Trust
30 Company, to the credit of the complainant. The said sum of \$2004.58 was paid by the complainant on account of prior encumbrances and for the recording of the deed to this defendant.

16. This defendant has no knowledge or information from which to form a belief as to the allegations contained in paragraph 16 of complainant's amended bill and leaves the complainant to
40 make such proof thereof as it may deem necessary.

Answer of Defendant

17. That it admits paragraph 17 of the amended bill.

THIS DEFENDANT FURTHER ANSWERING SAYS:

18. That until after it had paid the full price for the land and had received its deed therefor, it had no knowledge of any claim by said Frank W. McNeal of any irregularity in the proceedings of the board of directors. 10

19. That it was in no way connected with the complainant; that it paid the price asked by complainant for said land, which price was not only a good price but an excessively high price and that it dealt with complainant believing, as it now believes, that the persons who claimed to constitute the board of directors of the complainant were in fact its lawful directors and that if said persons who purported to be such directors were not, through any irregularity in their election or qualification, the lawful directors yet they constituted the defacto directors of the complainant and as between the complainant and this defendant the deed executed by the president of the complainant under its corporate seal and attested by its secretary in pursuance of the resolution of such board is in all respect valid. 20 30

20. That all the stockholders of the complainant and said Frank W. McNeal, who claims to be a stockholder, had full knowledge of the conveyance from the complainant to the defendant and for three years they acquiesced therein; that this defendant has since that time, with the knowledge of all of complainant's stockholders and said Frank W. McNeal, made valuable and extensive improvements thereon; that the complainant has not tendered or offered to pay to this defendant the amount or any part of the money paid to it for 40

Replication

said land or to make compensation to this defendant for the value of the improvements placed thereon, by reason whereof the complainant is estopped from claiming any interest in said land, and is in laches in bringing this suit.

- 10 21. This defendant says that complainant's amended bill should be dismissed because the same was not signed by counsel.

THIS DEFENDANT HUMBLY PRAYS to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

FRANCIS LAFFERTY,
Solicitor of Defendant.

20

Replication

(Filed, June 24, 1916.)

IN CHANCERY OF NEW JERSEY

30	Between NEPTUNE MILDEW AND WATER- PROOFING COMPANY, Complainant, and CENTRAL RAILROAD COMPANY OF NEW JERSEY, Defendant.	}	On Amended Bill, Etc.
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The complainant joins issue on the answer of the defendant.

A. P. BACHMAN,
Solicitor of Complainant.

40

Amendment of Bill on Trial

Between NEPTUNE MILDEW AND WATER- PROOFING COMPANY, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> CENTRAL RAILROAD COMPANY OF NEW JERSEY, <div style="text-align: right;">Defendant.</div>	}	10
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Pursuant to leave granted on the trial of the issues herein, upon an application due notice of which was served upon defendant's solicitor March 7th, 1917, complainant hereby amends the sixteenth paragraph of its bill of complaint by substituting for the words "*de facto*" occurring in its amended bill the word "*usurping*" and as so amended, alleged as part of said bill. 20

Dated, March 22d, 1917.

NEPTUNE MILDEW & WATERPROOFING Co.,
 by Frank W. McNeal,
 Secretary and Treasurer.

A. P. BACHMAN,
 Solicitor and of Counsel with complainant.

State of New Jersey, County of Essex,	}ss:	30
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Frank W. McNeal, being duly sworn on his oath deposes and says that he is secretary and treasurer of the complainant corporation; that he has read the foregoing amendment and that such amendment and the paragraph as amended are true to the best of his knowledge, information and belief.

FRANK W. McNEAL.

Subscribed and sworn to before me this
 28th day of March, A. D., 1917.

Edward Dillon,
 Atty. at Law,
 of New Jersey.

Conclusions

IN CHANCERY OF NEW JERSEY

10	Between NEPTUNE MILDEW AND WATER PROOFING COMPANY, <div style="text-align: right;">Complainant,</div> and CENTRAL RAILROAD COMPANY OF NEW JERSEY, <div style="text-align: right;">Defendant.</div>	}	On Bill
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Mr. A. P. Bachman for the complainant.
 Mr. Louis Hood and Mr. Francis J. Lafferty for
 the defendant.

20

LANE, V. C.

I decided this case at the conclusion of the hearing. The stenographer's notes have been lost. It is extremely difficult for me several months after the hearing to bring back to my mind the facts and the impressions made upon me by the various witnesses.

The bill was brought to set aside a deed pur-
 30 porting to be made by the Neptune Mildew and
 Waterproofing Company to the Central Railroad
 Company of New Jersey some short time after the
 16th day of November, 1914. It is brought by
 Frank W. McNeal as an alleged stockholder of the
 Neptune Mildew and Waterproofing Company in
 the right of that company. The charge being
 that those who assumed to act for the company in
 the transaction were not authorized to do so for
 the reason that the directors had not been elected
 40 by a majority of the stock. The total stock of the

Conclusions

corporation was two hundred shares and Frank W. McNeal, the complainant, insisted that in 1901 he obtained from his brother, Lynton S. McNeal, one of the original incorporators, one hundred shares and never surrendered them. The remaining one hundred shares were controlled by Mrs. Leopold Puhlman, or her estate. She died in 1900. The testimony is clear that there was not in the minute books or other books of the company anything to indicate any interest of Frank W. McNeal. The company sometime previous to 1914 had suspended business and Lynton S. McNeal testifies that he lost all interest in it. Lynton S. McNeal was under obligations to Puhlman and finally made an assignment of one hundred shares for the benefit of Puhlman. Lynton S. McNeal now denies that he had any interest whatever in the stock in 1913 inasmuch as he had assigned all the stock he ever had to his brother some years before. Yet in March 1913 he signed a waiver of notice of stockholders' meeting. He explains this by stating that he was coerced or induced to do so by William P. Martin, Esq., a counsellor at law. I do not believe him. The assignment or transfer executed by Lynton S. McNeal calls for one hundred shares. He insists at the time he executed it, it called for but one share. I do not believe this. I think the assignment was for one hundred shares, particularly in view of the fact that on April 21st, 1913 in writing to his brother, he uses this language: "By my assignment of one hundred shares of Neptune Mildew and Waterproofing company, dated March 1st, 1913." After the assignment of the stock by Lynton S. McNeal new directors and officers were elected and it was these

Conclusions

10 directors and officers who consummated the transaction with the Central Railroad Company. The testimony of Lynton S. McNeal in this proceeding is inconsistent with his testimony in prior proceedings in the Supreme Court, on mandamus. Assuming that Frank W. McNeal had two certificates of stock, each for fifty shares, signed as indicated in the testimony by, I think, the president and general manager, I reach the conclusion that such transfer of interest from Lynton S. McNeal to his brother, Frank W. McNeal, was never acted upon, and that the legal title to the stock remained in Lynton S. McNeal. In any event, Frank W. McNeal permitted Lynton S. McNeal to do with it as he pleased and he is now estopped from questioning the acts of Lynton S. McNeal so far as
20 third parties are concerned. If the complainant sought to rely upon the validity of the two alleged certificates of stock produced by Frank W. McNeal he should have produced Puhlman as a witness.

I conclude, therefore, that the assignment made by Lynton S. McNeal for the benefit of Puhlman of one hundred shares of stock was valid, and that therefore at the time of the making of the deed,
30 the corporation was properly organized and the directors and officers who acted had power to act.

The net proceeds of sale were received by the officers of the Neptune Mildew and Waterproofing Company and deposited in the Roseville Trust Company. That company failed, dividends were paid, and the balance is now in the hands of the present officers of the company to be distributed according to the respective rights of the stockholders. With the method of such distribution at
40 this time I have nothing to do.

Lynton S. McNeal—Direct

Transcript of shorthand notes of testimony taken in the above entitled cause on March 24, 1917, at Chancery Chambers, Newark, New Jersey, before Hon. Merritt Lane Vice Chancellor.

10 The complainant moves to amend his bill of complaint by striking out the words "*de facto*" in the 16th paragraph and inserting the word "Usurping." The defendant objects to the amendment.

The Court: I will permit it. You may substitute a sworn amendment.

FRANK W. McNEAL, sworn:

Direct-examination by Mr. Bachman:

Q. Did you verify the bill of this proceeding?

20 A. Yes, sir.

Q. And do you verify under oath the amendment of the 16th paragraph of the bill by substituting the word "Usurping" for the words "de facto"?

Mr. Hood: I object.

The Court: I exclude it.

30 LYNTON S. McNEAL, sworn:

Direct-examination by Mr. Bachman:

Mr. Bachman: I offer in evidence certified copy of the certificate of incorporation of the complainant.

Marked Exhibit C-1.

I offer in evidence a certified copy of deed of Leopoldene Puhlman and husband to the Neptune Mildew and Water Proofing Company, dated July 20, 1899.

40

Marked Exhibit C-2.

William P. Martin—Direct

I offer in evidence certified copy of deed of Neptune Mildew and Water Proofing Company to the Central Railroad Company of New Jersey.

Marked Exhibit C-3.

Q. Do you recall the Neptune Mildew and Water Proofing Company? A. Yes, sir. 10

Q. When did you first become acquainted with the concern? A. In 1899.

Q. Now I show you Exhibit C-1 and ask you if you signed the original certificate of incorporation that was executed on July 20, 1899? A. Yes, sir.

Q. And did you acknowledge your execution of that? A. Yes, sir.

Q. Who were the other parties who joined in the execution of that certificate? A. Mrs. Leopoldene D. Puhlman and John Wollney. 20

Q. I show you Exhibit C-2 and ask you if you recall a deed having been executed by Leopoldene Puhlman and delivered to the complainant? A. No, sir.

Mr. Bachman: I ask my adversaries to stipulate, if they will, that the books of the company have been destroyed by fire?

Mr. Hood: Some of them have, but not all. 30

WILLIAM P. MARTIN, sworn:

Direct-examination by Mr. Bachman:

Q. Do you recall having had delivered to you by Mr. Puhlman the minute and stock book of the Neptune Mildew and Water Proofing Company 40

Lynton S. McNeal—Direct

prior to the Equitable Building fire in New York?

A. Yes; Mr. Puhlman delivered to me books that seemed to be the books covered by the description in the question.

10 Q. And one of them was a minute book and the other a stock book, wasn't it? A. Yes, stock certificate book and minute book.

20 Q. And where were these kept? A. These were kept for a part of the time after they were delivered to me by Mr. Puhlman in my safe, and subsequently they were taken out, they were taken out a great many times, but they were taken out particularly shortly before January 9, 1912, on which date the Equitable Building, 120 Broadway, burned up; they were delivered by me to Mr. Carl L. Brown, a young lawyer clerk in my employment, and I noticed them on his desk, or on a shelf near his desk, shortly before this fire occurred.

Q. And it is your belief the books were burned up in the fire? A. Undoubtedly, sir; that is my belief, sir.

30 LYNTON S. McNEAL, resumed:

Direct-examination by Mr. Bachman:

Mr. Bachman: I wish to call attention of the court to the endorsements on Exhibit C-1, showing the filing of a certificate of incorporation in the county clerk's office, and also that in the Secretary of State's: I wish to have that included as part of the Exhibit.

40 Q. When did you have the first meeting of stock-

Lynton S. McNeal—Direct

holders under the certificate of incorporation C-1?

A. In 1899, July.

Q. Within a few days after? A. Yes, sir.

Q. State what occurred as to that meeting. By the way, were you the secretary of the corporation? A. Secretary and treasurer, yes.

Q. And did you have the custody of this minute book that Judge Martin has testified to as having been destroyed? A. Yes; I had the custody of all the books.

Q. State what occurred at this meeting of the stockholders. A. Of course we had meetings.

Q. The first meeting? A. The first meeting of the incorporation?

Q. Yes? A. There was Mrs. Puhlman, Mr. John Wollney, myself and Mr. Puhlman was there, and my brother; we incorporated and issued stock in the company.

Q. How was the stock apportioned and how was it paid for? A. The stock was apportioned, there was to be two hundred shares.

Q. Par value? A. Par value at ten dollars a share.

Q. How many shares was Mrs. Puhlman to get for the deed Exhibit C-2? A. She was to get \$1,500, par value was \$1,500.

Q. And who was to get the other \$500? A. I was to put in \$500, fifty shares.

Q. Did you put in \$500 in cash? A. Yes, sir.

Q. Did you have any other stock after that? A. Yes; Mrs. Puhlman then issued to me fifty shares of stock to make me—it was to be an equal partnership.

Q. You mean by partnership an equal interest? A. Equal interest, yes.

Lynton S. McNeal—Direct

Q. Equal interest in an intended corporation?

A. In this intended corporation.

Q. Was stock issued in this company fifty shares to you in return for \$500, and fifty shares, by request of Mrs. Puhlman? A. No, sir; it was issued in two certificates to me fifty shares each,

10 Q. And how were the other shares issued if you recall? A. I recall one share to Mr. John Wollney and ninety-nine shares to Mrs. Leopoldene Puhlman.

Q. Did you make any record at that time for your own guidance? A. I did. I had a small book.

Q. I show you a book and ask you if you can identify that? A. Yes.

20 Q. What is it? A. It is a memorandum book that I kept of some proceedings of the company business that was done.

Q. Does that state what the stock issue was at the time you have been testifying about? A. Yes, sir.

Q. What else does it contain in general? A. Well, general memorandums, the name of the agent and name of the stockholders.

Q. All the creditors of this complainant? A. Yes, sir.

30 Q. Were these writings in that book the exception of two pages in the rear made by you at the time they are dated? A. All made by me, sir; at the times they were dated.

Mr. Bachman: I offer that book in evidence, with the exception of two pages which are not in his handwriting.

By Mr. Hood: Q. Did I understand you to say this was your handwriting? A. Yes, with the exception of two pages.

40

Lynton S. McNeal—Direct

Mr. Hood: I haven't any objection.

Marked Exhibit C-4.

Q. What directors were elected at this first stockholders meeting? A. I was elected secretary and treasurer; Mr. Puhlman was elected president.

10

The Court: The question was what directors were elected? A. We were directors.

Q. Who was the other director? A. Mr. John Wellney.

Q. And was a meeting of the directors held thereafter and officers elected? A. Yes, sir.

Q. And those were the officers you have just set forth? A. Yes, sir.

Q. How long did you continue to be secretary and treasurer? A. Until about December, 1901.

20

Q. Was anything done by the stockholders with reference to the bond and mortgage after the organization of the corporation? A. Shortly after we had organized a lawyer from the bond and mortgage people wanted some corrections made in the minutes or resolutions of the company to cover some points that we had not properly covered, and at his insistence action was taken to satisfy him in relation to it, a matter of dates, something like that.

30

Q. I call your attention to the fact that certificate of incorporation is dated July 20, 1899, verified July 21, 1899, filed in the office of the Hudson County Clerk July 21, 1899, and filed in the office of the Secretary of State July 26, 1899, and ask you if any of these matters were the subject of discussion? A. Yes, there was a question of dates there somewheres, I don't just recall what it was, but, at any rate, it was corrected at this—shortly after we had organized.

40

Lynton S. McNeal—Direct

Q. Who were present at the time this resolution of correction was passed? A. Mrs. Puhlman, Mr. Wollney, myself and Mr. Rudolph Puhlman.

Q. Anybody else? A. I don't recall anyone else—yes, the gentleman from the bond interest, whoever he was.

Q. Is that Leopoldine Puhlman who was present at this meeting the same one who executed a deed to the Neptune Mildew and Water Proofing Company? A. Yes, sir.

Q. At the time of the organization of the company how many shares were issued to Mrs. Puhlman? A. Ninety-nine.

The Court: Hasn't that all been gone into? That has all been gone into.

Mr. Bachman: I wish to show consideration for the deed.

The Court: He has already testified that she was given 150 shares.

Q. How long did you continue to hold your 100 shares of stock in this corporation? A. Until December, 1901, probably.

Q. What did you do then? A. Gave them to my brother Frank W. McNeal.

Q. What did he give you in return? A. He loaned me money to go into the business, \$500.

Q. And what was the consideration of your handing him over those 100 shares? A. To practically wipe out my debt.

Q. Did you ever have anything more to do with the corporation after that? A. No, sir.

Q. Was that agreed between you two? A. Yes.

Q. Do you recall being summoned to New York sometime in 1912? A. Yes.

Q. By whom? A. Mr. Rudolph Puhlman.

Lynton S. McNeal—Direct

Q. Where did you go? A. I met Mr. Puhlman in Judge Martin's office in New York.

Q. And was anything said to you then about stock that you previously owned in the corporation? A. No.

Q. What was said? A. About stock that I had 10 previously owned?

Q. What was the conversation that you had at that time with reference to the complainant corporation? A. That Mrs. Puhlman's will had been lost in the Equitable fire, and her interest in the company, to get Puhlman her interest and all the rest of it, they wanted me to—I drew her will, Mrs. Puhlman's will.

Q. What was the conversation? A. And the conversation was in relation to having the will 20 probated.

Q. What was the conversation, if any, in regard to the stock in this corporation? A. That I had a certain interest in this corporation on account of my business connections with Mrs. Puhlman in relation to drawing her will.

Q. Who said that? A. Judge Martin.

Q. To whom? A. To me. And for legal reasons it might be necessary for me to make an assignment or to sign an assignment. 30

Q. For what? A. For any stock I might have, still have in the company.

Q. What did you say? A. I had no stock in the company, neither stock nor interest in the company.

Q. Did you state that to these gentlemen? A. Yes.

Q. At that time? A. Yes.

Q. What happened afterwards? A. Why, I went out afterwards. 40

Lynton S. McNeal—Cross

Q. What happened after you went out and went home? A. Shortly after, it was within a month or two, Mr. Puhlman came up to New Bedford with an assignment for me to sign for a share of stock in the company.

10 Q. How many shares did that paper call for?
A. As I recall it called for one.

Q. And did you sign that paper? A. Yes.

Q. Was it witnessed? A. Yes.

Q. By whom? A. Mr. A. E. Small.

Q. And did you hand it back to Mr. Puhlman?

A. Yes.

By the Court: Q. Why did you sign that if you had no interest in the company? A. From what Judge Martin had told Mr. Puhlman and me, for
20 legal reasons it was necessary for me to have such an assignment to clear up the Puhlman interest.

CROSS-EXAMINATION by Mr. Hood:

Q. You have testified on a number of occasions before in the controversies relating to this stock, haven't you? A. Once.

Q. Only once? A. As I recall, yes.

Q. Was that on the mandamus proceedings down in Jersey City? A. Yes.

30 Q. Did you not testify in the suit in New York against Judge Martin when your brother sued to recover part of the proceedings of the sale of this property? A. I was not here.

Q. You were not there at that time? A. No, sir.

Q. Now, you did testify, however, in the proceedings down in Jersey City? A. Yes.

Q. Did you then say that the consideration for your stock or for all the stock that was issued was
40 \$1,500, which was to be paid for the property that

Lynton S. McNeal—Cross

Mr. Puhlman was to convey and \$500 in cash that was to be contributed? A. I don't recall that.

Q. You don't recall that you said that? A. No, sir.

Q. Didn't you say that the consideration was a thousand dollars to be given to Mrs. Puhlman for her land, and that you were to get from the corporation a thousand dollars worth of stock for \$500 that you would put in? A. I don't recall that testimony. 10

Q. Will you say that you did not say it?

Mr. Bachman: This is not the proper way to test the witness's memory; he asks if he was asked certain questions and gave certain answers. I object.

The Court: I exclude the question. The proper way is to confront the witness with the testimony that he has given before. 20

Q. I show you here a paper that is headed "A waiver of notice," and call your attention to L. S. McNeal, the first signature under it? A. Yes.

Q. Is that your signature? A. Yes.

Q. When you signed your name to that waiver of notice did you know what you were doing? A. Why, I supposed I did.

Q. I might read the notice now. "We, the undersigned stockholders of the Neptune Mildew and Water Proofing Company hereby waive notice of the time, place and purpose***and fix the 6th day of March 1913, at 10 o'clock in the forenoon as the time, and registered office of the company 34 Wilson Street—A. That is my signature. 30

Q. That is your signature? A. Yes.

Q. Where were you when you signed that? A. In New Bedford. 40

Lynton S. McNeal—Cross

Mr. Hood: I make an offer, sir, of this waiver of notice identified by Mr. McNeal's signature which is contained in this book.

10 Mr. Bachman: I object, that there are other things that have been added since Mr. McNeal put his signature to it. If the foundation is laid for the whole paper I have no objection to its going in at all.

The Court: It may be admitted so far as it has been identified by Mr. McNeal. It may be necessary afterwards to show the other signatures and when they were put there.

Marked Exhibit D-1.

20 Q. Now you say that you signed also an assignment of your stock? A. Yes, an assignment of stock.

Q. On the occasion that you visited Judge Martin's office who did you see there? A. Judge Martin, Mr. Puhlman and a young man in the outer office.

Q. And Mr. Wagner? A. I don't recall his name, and I don't know as I would know him.

30 Q. Did you on that occasion speak to Judge Martin with regard to the ownership of the stock that has been issued to you by the Neptune Miledew and Water Proofing Company? A. Yes.

40 Q. Did you say on that occasion to him, in answer to a question that he put to you, in answer to a question put by Judge Martin to you "Why did you give this stock to Mr. Puhlman?" Did you say in answer to that question "Why, I was under obligations to him; I was through with the company and I didn't want to have anything more to do with it, and I gave it to him as a present, made

Lynton S. McNeal—Cross

him a present of it; I didn't want to have anything to do with it." A. No, sir; not my stock.

Q. You didn't say that? A. Not my stock; no, sir.

Q. Not your stock? A. No, sir.

Q. Well, did you make that statement? A. That I wanted to have nothing to do with it? 10

Q. Did you make, in answer to Judge Martin's question, "Why did you give this stock to Mr. Puhlman?" Did you say "Why, I was under obligation to him; I was through with the company, and I didn't want to have anything more to do with it, and I gave it to him as a present, made him a present of it?" A. No, sir.

Q. You did not say that? A. No, sir.

Q. Was there any other stock except yours that was talked of at Mr. Martin's office? A. Why, Mrs. Puhlman's stock, which included the Wollney stock, of course. 20

Q. Well, you didn't have anything to do with that, did you? A. Well, I assumed from what Judge Martin was saying that I did have something to do with it.

Q. What did he say from which you assume that you had something to do with it? A. On account I had drawn Mrs. Puhlman's will; Puhlman was trying to get the will probated and get straightened out on this property with people from Minneapolis, her interest, that I had an interest in her stock. 30

Q. How did you figure that you had an interest in her stock because you drew Mrs. Puhlman's will? A. I didn't figure it at all; I didn't understand it.

Q. You did not figure that? A. No. 40

Lynton S. McNeal—Cross

Q. As far as you knew Mrs. Puhlman hadn't given you anything under the will? A. No.

Q. You were not to benefit? A. No; I had drawn the will.

10 Q. So there wasn't anything that occurred there from which you reached the conclusion that you had any interest in the Puhlman stock? A. No, I said I had no interest in the Puhlman stock.

Q. If you had no interest in it why did you sign? A. Because they insisted, Judge Martin and Mr. Puhlman, when they came up to New Bedford, they needed this.

20 Q. Judge Martin was not in New Bedford? A. No; I didn't sign that in Judge Martin's office; it was brought to me afterwards by Mr. Puhlman; he said "if you will clear this matter up, will you sign it?" I said "certainly I will," and I did.

Q. You did not sign any papers down in Judge Martin's office? A. Not that I recall.

Q. Now, you took charge of the books of the company when you were elected secretary and treasurer? A. Yes, sir.

Q. How many books were there? A. There was stock book, minute book, cash book, check book, two or three memorandum books.

30 Q. Was there a stock transfer book? A. I don't recall stock transfer book; no, sir.

Q. Eh? A. I don't recall stock transfer book; we had one stock book, that is like a large check book, with stubs in it; that was stock book; the minute book we had.

Q. Did you have stock transfer book? A. I don't recall stock transfer book; no, sir.

40 Q. Did you make any entries in any of those books? A. Yes.

Lynton S. McNeal—Cross

Q. In which of the books did you make any? A. All of the books.

Q. What did you enter in the minute book? A. The records of the meetings that we held.

Q. Minutes of how many meetings were entered in the minute book? A. Well, I don't—I couldn't say. 10

Q. Were there any other minutes entered in the minute books except the minutes of the first organization meetings? A. Not that I recall, no, hold on, do you mean that that was the only minutes?

Q. Yes? A. No, sir; there were more than that.

Q. There were more than that? A. Yes, sir.

Q. But you cannot say how many there were? A. No, I couldn't say. 20

Q. Did the company have meetings frequently?

A. Well, you see; we all lived there practically together, Mr. Puhlman and Mrs. Puhlman and Wollney, I was right there every day; whenever it was necessary we had meetings.

Q. That was meetings of the directors, of course? A. Yes, of course, directors and stockholders.

Q. And when you had those meetings did you make minutes of it? A. I posted minutes, yes. 30

Q. And of all the meetings you had you entered minutes? A. Yes.

Q. So you had quite a few minutes from the time of the organization in 1899 and the time you got out in 1901? A. We had quite a few.

Q. And also those you entered in the book? A. Yes.

Q. With regard to the stock book did you have anything to do with entries there? A. Yes, sir. 40

Lynton S. McNeal—Cross

Q. Did you have everything to do with entries there? A. Yes.

10 Q. Do you recall how many certificates of stock you issued? A. At the organization I had two, Mrs. Puhlman had one and I had one; then there was a change when one—no, I am not sure whether Mrs. Puhlman had two and Wollney one, but I had two; then there was one change before I left where one of Mrs. Puhlman's certificates was taken in and a change made.

Q. And do you know how many certificates were issued for Mrs. Puhlman that was changed? A. I believe two or three, I couldn't say, I don't know. It was a matter of raising money at that time.

20 Q. I call your attention to page 7 of your little memorandum book, Exhibit C-4, and ask you whether that is your handwriting? A. Yes, that is my handwriting.

Q. Is that your handwriting? A. Yes, sir.

Q. And it is dated December 26, 1901? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Did you write that on the 26th of December, 1901? A. No—along about that time.

Q. Along about that time? A. Yes.

30 Q. What did you write it for? A. In consideration of cancelling the debt of \$500 I owed Frank W. McNeal that he loaned me to purchase that; it was the memorandum I was keeping for myself.

40 Q. A memorandum that you kept for yourself in these words: "In consideration of the cancelling of the debt of \$500 I owe Frank W. McNeal, which he loaned me to purchase stock in the Neptune Mildew and Water Proofing Company, I have this day sold and delivered to him certificates three

Lynton S. McNeal—Cross

and five for fifty shares each of the said company, each certificate duly signed in blank on the back for transfer." "This ends my connection with the company." A. Yes.

Q. Signed Lynton S. McNeal, dated December 26, 1901?

10

The Court: Is that right? Did you write that formal document in there? A. Yes.

By the Court: Q. Merely a memorandum? A. There are other memorandums of the same type that I had taken from the books at different times that I put in; it was a peculiar case there the reason I put that down.

By the Court: Q. What was the reason you put it down in that form? A. It was just around Christmas time, it was the day after Christmas, and I was rather disgusted with the entire company, and all that kind of business, and I passed over my stock to my brother and made that memorandum; that book I haven't seen in years until I found it out here in South Orange and I sent it out to him; it is more or less of a boy's book when you put it down that way.

20

Q. Now, Mr, McNeal, you had this book at the time when you testified down in Jersey City, didn't you? A. No, sir.

30

Q. Didn't you have it? A. I don't remember; I didn't have it then; no, sir.

Q. Did you say anything about this book at that time? A. No sir; I believe I found that it was there and sent it on to my brother afterwards.

Q. When did the recollection first come back to you that you had this book? A. Why, I had moved from South Orange, shipped a lot of old papers and stuff to New Bedford, where I am

40

Lynton S. McNeal—Cross

residing at the present time; in these old papers I found that book; in fact, I just glanced through it and sent it on to Frank, told him it probably might be of interest to him.

10 Q. This is not your book at all, is it? A. Yes, that is my book, yes.

Q. Isn't this the address book of the Neptune Mildew and Water Proofing Company, 34 Wilson Street? A. No, sir.

Q. Doesn't it say so on the first page? A. Yes.

Mr. Bachman: I submit that is a mere trifle.

The Court: I will admit it.

A. They never had that book; those old pass books they had for years.

20 Q. Wasn't this book opened as the address book of the Neptune Mildew and Water Proofing Company? A. No, sir.

Q. And didn't you enter in it the addresses? A. I entered them, yes.

Q. Of the stockholders of the Neptune Mildew and Water Proofing Company? A. I did, sir.

Q. I call your attention to page 20 and the page marked opposite it, is that in your handwriting? A. No, sir.

30 Q. Didn't you have anything to do with it? A. No, sir.

Q. Was that in there at the time you sent this book on? A. No, sir.

Q. Those were entries that have been made since that time, as far as you know? A. Yes.

Q. Was there ever a time that either you or Mrs. Puhlman owned a single share in the Neptune Mildew and Water Proofing Company? A. Single share?

40 Q. Yes? A. No, sir.

Lynton S. McNeal—Cross

Q. And she owned ninety-nine? A. Yes.

Q. And you owned a hundred? A. Yes, sir.

Q. As far as you recall there was never a time when she was the owner of just one share? A. Not as I recall, no, sir.

Q. And as far as you know there was never a time when she had a certificate or you had a certificate for just one share of that stock? A. No, sir; I never had a certificate for one share. 10

Q. Were you actively interested in the affairs of the company, besides being the treasurer and stockholder? A. Yes, sir.

Q. And during all the time until when you say that you assigned your shares of stock was the company actively engaged in business? A. Yes.

Q. Do you know anything of the company after that time? A. Only from hearsay. 20

Q. You did not pay any further attention? A. Never paid any attention.

Q. You did not occupy part of the building? A. No, sir.

Q. You were not the gentleman who ran the ink factory down on the first floor? A. No, sir; I don't know anything about that.

Q. And at the time when you bought the property, took the property over from Mrs. Puhlman, was there a building on the property? A. Yes. 30

Q. During your time there were not any building operations going on, a building was not extended on that? A. No, sir.

Q. So when you quit the building was already an old one at the time it was taken over? A. Yes.

Q. What was it, brick or frame? A. Large frame building. 40

Lynton S. McNeal—Re-direct

RE-DIRECT-EXAMINATION by Mr. Bachman:

10 Q. I show you Exhibit D-1 and ask you if the last three signatures on that paper were there when you put your signature on? A. No, sir; my signature with my witness was signed in New Bedford.

Q. And was there any ink writing on the paper there? A. No, sir, there wasn't; that was in blank.

Q. Whose signature is to the left of yours? A. That is my chief engineer, A. E. Small.

Q. You mean by chief engineer, employed on the same boat that you were employed on? A. Yes, he was chief engineer on a ship that I am connected with.

20 Q. Did you rely upon what Mr. Puhlman and Judge Martin told you when you signed these various papers? A. Absolutely.

Q. Talking about a single share of stock, what about Wollney's one share? A. Wollney had one share. Mrs. Puhlman did not have one share, neither did I have one share.

Q. Had you forgotten all about this book, Exhibit C-4, up to the time when you found it in your papers? A. Yes, I had no idea I had it.

30 Q. Did your brother Frank W. McNeal have any access to this book between the time you made the entries and the time you found it? A. No, sir.

Q. And when did you send this to your brother Frank? A. Well, I don't just exactly recall that; I sent him a note at the same time I sent it down to him.

40 Q. Was it a comparatively recent date? A. Well, within a year or so, yes, year or year and a half; I don't just exactly recall when I did send it; it was after all this trouble had come on.

Frank W. McNeal—Direct

RE-CROSS-EXAMINATION by Mr. Hood:

Q. Did you send it since the time you testified down in Jersey City? A. As I recall I did, sir.

Q. May I ask what your business is? A. I am superintendent of the United States Engineering Department.

Q. And you have been such how long? A. About fifteen years.

10

RE-DIRECT-EXAMINATION by Mr. Bachman:

Q. United States revenue? A. Yes, engineering department.

Q. And you are in the revenue service? A. Army, not the revenue.

20

FRANK W. McNEAL re-called:

Direct-examination by Mr. Bachman:

Q. When did you first become acquainted with the Neptune Mildew and Water Proofing Company? A. In July, 1899.

Q. Under what circumstances? A. My brother L. S. McNeal wanted to form a business connection of which they were to be equal owners in the business of cleaning sails that resulted in the incorporation of the Neptune Mildew and Water Proofing Company in July, 1899.

30

Q. Were you present at a meeting of the stockholders of the Neptune Compay when the mortgagee's attorney was there? A. No, I don't think I went into the meeting; I was in my shop adjoining, but I was in the immediate neighborhood,

40

Frank W. McNeal—Direct

and this man came to me and asked about it.

Q. Your brother testified that in December, 1901 he delivered certificates for one hundred shares of stock in the complainant corporation to you. Do you recall the circumstances of that occasion?

10 Mr. Hood: I object to the form of the question.

Mr. Bachman: Then I will withdraw it.

Q. When did you become a stockholder in the complainant corporation. I will withdraw that, too, as a conclusion.

The Court: It was not objected to.

20 Q. I show you what purport to be two certificates of stock in the Neptune Mildew and Water Proofing Company and ask you if you are the Frank W. McNeal to whom those certificates are made? A. Yes, sir.

Q. When were those certificates issued? A. On January 7, 1902.

Q. What were they issued in place of? A. Two certificates of stock, 3 and 5, fifty shares each.

Q. To whom were the certificates referred to last made, that is the certificates for which these were issued? A. The certificates 3 and 5 were issued fifty shares each to my brother.

30 Q. How did you get possession of those? A. By purchase from him on December 26, 1901.

Q. How much did you pay for them? A. I paid \$500 by cancelling the debt of \$500 I had loaned him which he purchased his original shares.

40 Q. What steps did you take after that with reference to the stock of the Neptune Company? A. Why, on January 7, 1902 I took my brother's two shares over; Puhlman produced his one hundred shares, which stood in the name of his wife

Frank W. McNeal—Direct

for ninety-nine shares and in the name of her brother John Wollney for one share, that made the entire two hundred shares that the incorporation comprised.

Q. What happened then? A. We held a stockholders meeting and those shares elected Mr. Puhlman president and myself secretary and treasurer and director; Mr. Puhlman director also. 10

Q. And what did you do with the shares of stock that were in the name of L. S. McNeal? A. I turned those in to the company.

Q. What did you do with them? A. They were cancelled by me writing across the face twice in red ink "cancelled". I marked on the stub opposite the original entry in the stock book "cancelled" and made the proper entries in there showing that they were cancelled and new stock issued, No. 8 and 9, in exchange for those. 20

Q. What did you do with the old certificates themselves? A. The only proper place was in the stock book where I placed them.

Q. Opposite the stub? A. Opposite the stub.

Q. How did you come then to issue the two certificates you have before you? A. Because these certificates were issued in exchange for those, and I was then secretary and treasurer. 30

Q. And whose signature is on there as president? A. My own.

Q. As president I said? A. As president Mr. Puhlman.

Q. And who was secretary and treasurer? A. Myself.

Mr. Bachman: I offer those certificates in evidence.

Marked C-5 and C-6. 40

Frank W. McNeal—Direct

Q. How long did you continue as secretary and treasurer of the corporation? A. Ever since then, and I am now.

10 Q. What happened in 1912 with respect to your own personal whereabouts, where did you go? A. I was in Panama canal zone.

Q. And where were you in March, 1913? A. I arrived home on the night or afternoon of March 31 from Panama.

Q. Had you been continuously in Panama for the month of March, 1913? A. There and on the high seas; I left New York on March first.

20 Q. Had you ever been informed of any intended meeting of stockholders or directors of the Neptune Mildew and Water Proofing Company with respect to a sale of its real property described in the bill of complaint that was made to the Central Railroad of New Jersey? A. No, sir.

Q. When did you first find out that there was anything like this under way? A. On the morning of April 3, 1913.

Q. What steps did you take then? A. I immediately called on the railroad company.

Q. What person? A. The Central Railroad Company of New Jersey.

30 Q. What person? A. Mr. Doughty and Mr. George Holmes.

Q. Do you know their relationship to the company? A. Mr. Doughty was the real estate man whom I had known for many years, and Mr. Holmes I was told was the General Counsel or solicitor of the railroad company.

Q. And what did you say to them? A. I told them I had just been informed of this sale.

40 Mr. Hood: I do not know that conversations are material.

Frank W. McNeal—Direct

Q. What did you do with Mr. Holmes and Mr. Doughty? A. I told them I had just been informed that they had purchased this property, that I was the secretary-treasurer-director and the largest individual stock-holder; I showed them my stock and told them I had received no notice, and no sale could be made without my signature and consent. They said that they had bought the property through the Fidelity Trust Company of Newark, who guaranteed the title, and referred me to them. 10

Q. Then what did you do? A. I came out to Newark and called up the office up on the ninth floor of this building, and I don't recall the gentleman's name who was the solicitor of the company.

Q. Mr. Lafferty? A. No. 20

Q. Mr. Belden you mean? A. Mr. Belden. I told him—

The Court: How is that material?

Mr. Bachman: They are the agents of the defendant in this matter.

A. I showed my papers and told my story to Mr. Belden and he sent for Mr. Lafferty.

Mr. Hood: One moment. I object.

The Court: I overrule it. The Fidelity is not a party here. 30

Q. What did you do with respect to the Central Railroad of New Jersey after your conversation with Mr. Holmes and Mr. Doughty? A. I did not finish telling you what I done with the Central Railroad. Mr. Holmes I told the entire transaction was a fraud.

Mr. Bachman: Have you the letter to the Central Railroad?

Mr. Hood: We haven't got it. 40

Frank W. McNeal—Direct

Q. Have you a copy of the letter to the Central Railroad? A. I have, yes.

10 Mr. Bachman: I offer in evidence check of the Fidelity Trust Company on itself to the order of Neptune Mildew and Water Proofing Company, together with the endorsement thereon, dated April 2, 1913.

Marked Exhibit C-7.

Q. Did you have charge of the minute books and stock books of the complainant corporation from the time you were secretary and treasurer until some later date? A. Yes.

Q. When did you lose possession of them? A. Why, when Puhlman took them from the company's safe in the shop and delivered them to Mr. Martin in New York.

20 Q. Do you remember inspecting these books? A. Oh, yes; yes, sir.

Q. And do you recall seeing any minutes there which were indicative of meetings held prior to that time? A. Oh, yes. All the minutes are there.

Q. When did you last see the stock certificate book? A. Why, I don't recall when; I haven't seen that—I have seen it in the safe but I have not examined it.

30 Q. No, but how long before they left possession of the company, I mean possession of the safe, rather, when did you last see the book, the interior of the book, approximately? A. Why, it must have been in 1905 or 1910, every time I went over there I opened the safe there was the book.

40 Q. At that time were the certificates which you say were cancelled in the name of L. S. McNeal still in the book? A. Yes, they were always there.

Frank W. McNeal—Direct

Q. Were these cancellation marks still on the certificate? A. Absolutely.

Q. Who paid for the expenses of the company after 1906?

Mr. Hood: I don't know that we have very much to do with that.

The Court: I do not see how that is material. 10

Q. Do you remember receiving a notice to attend meeting of the Neptune Mildew and Water Proofing Company in 1914? A. May I see the minutes?

Q. Do you recall receiving a notice to attend a meeting of the stockholders of the Neptune Mildew and Water Proofing Company in 1914? A. Yes, in December I think it was.

Q. And did you attend such a meeting? A. I 20 did.

Q. What happened there?

Mr. Hood: The record is the thing; he is the secretary. Let him produce the record.

The Court: I will allow it.

Q. What happened there with respect to your voting on the stock or being allowed to participate in the meeting? A. By advice of Mr. Tracy Mr. Puhlman refused to allow my stock to vote. 30

Mr. Hood: This was 1914; this seems to be after the transaction.

The Court: I do not see the object, but I do not see what harm it can do to anybody.

Q. (Question read) A. They refused my stock the right to vote, and my attorney then got out mandamus proceedings.

The Court: You were not asked about that. They refused to permit you to vote. 40

Frank W. McNeal—Cross

A. They refused to permit me to vote, yes.

Q. Did they refuse to let you take any part in the meeting whatever? A. Yes.

Q. What did you do after that then with respect to the corporation? Did you commence mandamus proceedings? A. Commenced mandamus proceedings.

Mr. Hood: I object. I do not really see that these transactions of 1914 have anything to do with it.

CROSS-EXAMINATION by Mr. Hood:

Q. What is your business? A. I am in the contracting business.

Q. And how long have you been in the contracting business? A. All my life.

Q. And were you in the contracting business from 1902 to 1913? A. Yes.

Q. Were you at all active in the affairs of the Neptune Mildew and Water Proofing Company? A. Only as secretary and treasurer. I allowed Puhlman to use the building for his carpet cleaning works.

Q. Whose building was this? A. The company's building.

Q. And he was president of it? A. He was president.

Q. According to what you say he was president since 1902? A. 1902.

Q. And you say that you as secretary and treasurer allowed him to use the building for carpet cleaning purposes? A. And have all the return from the profits of the Neptune Mildew and Water Proofing Company.

Q. And for him to have all the profits? A. To retain that for his own use.

Frank W. McNeal—Cross

By the Court: Q. In other words, you paid no attention to it? A. Paid no attention to it, other than to be secretary and treasurer.

Q. It was, so to speak, Puhlman's business, wasn't it? A. Oh, no.

Q. He ran it all himself. A. Oh, no.

Q. Wasn't he general manager and agent before he was elected president at the time Mrs. Puhlman was the president of the concern? A. Yes. 10

Q. And afterwards then, in 1902, as you say, he was formally elected president? A. Yes, sir.

Q. And didn't he continue as president of the corporation all the time until you came back from Panama, as far as you know? A. He was continued, yes.

Q. After this meeting in 1902 in January did you have any other meetings of the company? A. Yes, we had meetings very frequently. 20

Q. Did you have any meetings at which there was an election? A. No, sir.

Q. Did you have any meeting and elect officers? A. Yes, we retained the officers; the officers were continued in office.

Q. Did you go through the form? Did you have an annual meeting? A. Yes, we had annual meetings. 30

Q. Every single year? A. Every single year, yes.

Q. And every single year you went through the form of electing directors? A. Well, I don't know that we did every single year, but it was continuous, and it was a close corporation, Puhlman and I were—

Q. Won't you just answer my question. My question is whether every single year you elected directors? A. I don't recall. 40

Frank W. McNeal—Cross

Q. Did you elect directors at any time since you say you got to be secretary and treasurer? A. Oh, yes.

Q. When was that? A. On January 7, 1902.

10 Q. That is the time you were made secretary and treasurer? A. And director.

Q. Now since that time did you have any meeting at which you went through the form of electing directors and electing officers? A. Oh, yes, a number of times.

Q. And the old directors were kept up? A. Yes.

Q. Who were they? A. Rudolph Puhlman, myself and John Wollney.

Q. They were kept up? A. Yes.

20 Q. And were these meetings called on notice? A. No, we didn't go through the formality of giving written notice to each; we were all there, all there at the shop.

Q. Were waivers of the meetings signed, waivers of notice? A. I don't think so, no.

Q. These were annual meetings, were they? A. Annual meetings and special meetings; if anything come up and happened I would go over there and we would hold a meeting.

30 Q. So that the company was going on during all these days? A. Yes, in a sort of a dead way, business was going on.

Q. When were the annual meetings? A. In January.

Q. Do you remember what days, what particular day? A. No, I don't remember.

Q. You don't remember that? A. No.

40 Q. Did you keep any minutes of that? A. The minutes show.

Frank W. McNeal—Cross

Q. Do you write up the minutes of that? A. I have written up the minutes.

Q. Were those minutes included in the minute book that Mr. Puhlman took over to Judge Martin's office? A. I wrote them out, and then they were written out on the typewriter and inserted in the book. 10

Q. Was it one of these loose leaf books? A. No, sir, it was bound book.

Q. How did you put them into the book, these things that were written out? A. Oh, just pasted them in on the edge.

Q. So that the minutes of all these meetings you are talking about as a matter of fact were in the minute book of the corporation? A. Yes.

Q. And they bear your signature? A. I sometimes signed them with a stamp and sometimes simply with typewriter; I had it written out with a typewriter, sent it over to the shop, then we put it in the book. 20

Q. What I am asking is, you say you were the official secretary of this company—what I am asking is whether these minutes bear your name as secretary of the company? A. All those that I signed did bear my signature.

Q. I want to know whether you signed them or not? A. I don't know whether I signed them all; it was a close corporation. 30

Q. Did you sign any of them? A. Yes.

Q. In your own handwriting? A. Yes.

Q. And such of them as were not signed in your own handwriting are they in typewriting "Frank McNeal, secretary." A. Yes.

Q. Or they were either signed by you in your own hand or they were signed in your name in your office by typewriting, is that right? A. That is right. 40

Frank W. McNeal—Cross

Q. How many of those minutes do you recall that you had written out and put in this minute book? A. I don't recall, because going over a series of years, and I was simply helping Puhlman to make a living, advancing him money off and on, and my other business occupied my time and attention.

10

Q. Can't you give me any judgment at all as to how many there were. A. Produce the books and I will show you.

Q. Your side has testified your books were destroyed in the fire. A. Mr. Martin said they were destroyed in the fire; we believe it to be true.

Q. Now I am trying to get your memory as to what was in the book? A. I prefer not to speak from memory on a thing like that.

20

The Court: You have got to speak from memory.

Mr. Bachman: If he can.

A. I can't recall just how many meetings; there may have been three or four or a dozen; whenever we gathered together we had a meeting.

Q. I am talking about minutes you caused to be written out and pasted in that minute book, of which you say you have distinct recollection, and I am asking you whether you can tell me how many of those there were? A. I don't have a distinct recollection of minutes, just when they were written; it was a business affair going along—

30

The Court: Strike that out. You must have some recollection as to whether there were any minutes in the book which were signed by you as Frank McNeal, secretary and treasurer. You have testified there were some, that is true, isn't it? A. Yes, sir, there were.

40

Frank W. McNeal—Cross

By the Court: Q. Were there a number? A. Yes, there were a number.

By the Court: Q. As many as a dozen? A. And there may be less or there may be more.

By the Court: Q. Well, somewhere in that neighborhood? A. Yes, sir.

By the Court: Q. All of those were signed either by you, Frank McNeal, secretary and treasurer, or in typewriting? A. Yes, sir. 10

Q. Will you be good enough to tell us in detail just what happened after you say that your brother turned over that stock to you, two certificates you said, did you not? A. Yes.

Q. Now I want you to tell me just what you did after you got the two certificates of stock from him? A. Why I took them over to the shop and produced—I had my brother's two certificates of a hundred shares, Puhlman produced his one hundred shares which stood in the name of his wife, two certificates; he produced Wollney's certificate and produced John Lamont's certificate. 20

Q. That was in 1902? A. Yes, 1902; they made a total of two hundred shares. Mrs. Puhlman in the meantime had died in 1900, and this trouble had arisen between my brother and Puhlman that accounted for the action taken at that time.

Q. I am not asking that. I am simply asking you what you did; I don't care for your reasons; I just want to know what you did. A. This meeting was held; I was elected secretary and treasurer. 30

Q. Was that before or after this stock was transferred? A. Why, I think it was voted on my brother's stock.

Q. Eh? A. I think it was voted in my broth-

Frank W. McNeal—Cross

er's stock; I had 100 shares of stock, they made me the individual owner of it, and they voted, and Puhlman had his stock, 100 shares of stock, and that stock elected the new officers.

10 Q. You do not mean you had 200 shares and Puhlman had 200 shares, do you? A. No; beg pardon—100 shares.

Q. You took the stock over there and Puhlman was there. Well, now, did Puhlman transfer your stock for you? A. He signed the certificates; I transferred the stock.

Q. Was the stock transferred before you had the meeting, or did you have the meeting before you transferred the stock? A. We had the meeting with this two hundred shares of stock which my attorney at that time said—

20 The Court: Strike that out.

Q. I want to know what you did? A. I have told you what we did.

Q. If you have I have not appreciated it. What did you do first? Did you have the stock transferred to you first, or did you have a meeting first, I mean a meeting of the company? A. We had a meeting of the company.

Q. First? A. First.

30 Q. Who was there at that meeting? A. Rudolph Puhlman and myself.

Q. Now you knew the situation about Mr. Puhlman's stock, did you not? A. Absolutely, sir.

Q. That stock was in the name of his first wife, wasn't it? Whatever she had was in her name, wasn't it? A. No.

Q. Wasn't it in her name, Leopoldene, wasn't the stock in her name, 99 shares of it? A. Yes.

Q. And wasn't she dead? A. She was dead.

40 Q. And had her will been proved? A. No, sir; he said—

Frank W. McNeal—Cross

Q. I don't care what he said. I am simply trying to find out what you know about it. Was Wollney there? A. No.

Q. He had one share of stock, didn't he? A. That was Puhlman's stock.

Q. It stood on the books in his name, didn't it? 10
A. Yes, but Wollney had endorsed it in blank on the back and gave it to Puhlman.

Q. How do you know? A. I know it because I saw it.

Q. So far as your records went at that time didn't that stock stand in the name of Wollney?

A. Stood in the name of John Wollney, and does yet.

Q. On the records of the company? A. On the records of the company—no, not now, not since March, 1916. 20

Q. Then up to March, 1916, it still stood in the name of Wollney? A. Yes.

Q. Didn't you tell me before Wollney attended all these directors meetings between 1902 and 1912? A. I did not.

Q. You did not say that? A. No, sir.

Q. Didn't you tell me before that any meetings that were held of directors and stock holders after you got to be a member of this corporation that you and Puhlman and Wollney were present? A. At the meetings Wollney was there occasionally. 30

Q. Wollney was there occasionally? A. Yes.

Q. And exercised rights as stockholder, did he? A. No he didn't exercise anything; he was just a dummy for Puhlman, that was all.

Q. But he was there for the purposes of the meeting? A. He was just hanging around.

Q. Just hanging around? A. That is all; he did as he was told. 40

Frank W. McNeal—Cross

Q. Well, at any rate, you and Puhlman being together there held a meeting? A. Yes.

Q. And elected Puhlman president? A. Yes.

Q. And elected you secretary and treasurer?
A. Treasurer.

10 Q. Did the bylaws provide for any vice-president in that company? A. I don't think so.

Q. Did you have bylaws? A. We had bylaws, yes.

Q. And were not the bylaws in your minute book? A. They were.

Q. Following the meeting of the incorporators of the company? A. I don't recall they followed that meeting, but they were in the minute book.

20 Q. When the company was first organized do you know whether or not Wollney was its vice president? A. No, sir; he never was; Wollney was a director because we had to have three directors.

Q. Did you ever examine the books for the purpose of ascertaining whether or not on the records Wollney had been vice president of the company? A. He never was.

Q. You say that absolutely, he never was? A. Yes.

30 Q. And you say absolutely the records of the company, the minutes of the company never say that he was elected to that office? A. The minutes as they were written don't show.

Q. The minutes as they were written don't show? A. Yes.

Q. And you know that because you have inspected the minutes many times? A. Not many times; a number of times; I know what the minutes were.

40 Q. Do you say whether or not your bylaws pro-

Frank W. McNeal—Cross

vided for a vice president? A. I don't recall whether they did or not.

Q. At any rate, you did not elect any at that meeting? A. No, we never had a vice president.

Q. When they got through that meeting you began to transfer stock, did you? A. Oh, yes; at the same meeting, but not after the meeting; at that meeting. 10

Q. You got out your stock certificate book, and who did the work on the stock certificate book? A. I did.

Q. And what work did you do, now in detail just tell me what you did? A. I took the two certificates from my brother, three and five, and marked those cancelled in red ink twice in large handwriting across the face; I marked in the stub of the book "cancelled", and I made the entries in there transferring that in exchange for certificates 8 and 9 in exchange for that stock. 20

Q. And then? A. And then issued a certificate.

Q. Then what did you do with those shares, paste them in? A. I think I pasted them, or either pinned them in the stub stock book, opposite the stub of original entry.

Q. Now let me speak to you here a moment. Have you ever been examined in any legal proceeding before in regard to what you did, with regard to these specific shares of stock? A. It is possible. 30

Q. Didn't you testify in regard to it in the mandamus proceedings down in Jersey City? A. Possibly.

Q. You say it is possible; is that as far as you can go? A. I was examined in that, yes, surely.

Q. In that did you say anything about your

Frank W. McNeal—Cross

writing the word "cancelled" twice upon the certificates of stock? A. I don't recall; the records will show.

Q. I am asking you what your memory is about it? A. I don't recall.

10 Q. You say you have no memory about it? A. As to that mandamus testimony?

Q. As to what you said on the subject of the certificates having the word "cancelled" written on them in red ink, at your former examination?

Mr. Bachman: I wish to object at this time. This is not a proper way to remind a person of what he said in a previous hearing.

20 The Court: He is not trying to remind him of what he testified to; he is asking him whether he did testify to a certain thing; he can not show the lack of testimony by producing it.

Q. I would like to get your very best recollection, Mr. McNeal. A. Why, I don't recall; I think I possibly have testified they were cancelled and they were cancelled twice across the face.

By the Court: Q. Your best recollection is that you did say that? A. Yes, that is my best recollection.

30 Q. You say you did say that? A. I don't say; I say that is my best recollection.

Q. You say your best recollection is that you said at the hearing on the mandamus proceeding that those certificates of stock had the word "cancelled" written on them? A. If I didn't say it I intended to say it; the records show what it is.

40 The Court: Do not go any further with that. If you have something there show it to him.

Frank W. McNeal—Cross

Mr. Bachman tendered record in the mandamus suit to Mr. Hood to be used in this case.

Q. Can you tell me whether at the time when you pasted those certificates in the book, those that you now say have been marked cancelled, whether or not the assignment in the back was blank or filled up? A. No, sir, it was in blank. 10

Q. But it was signed? A. By signature and witnessed.

Q. Who was the witness? A. I don't recall; it was some man in the house at the night I got them.

Q. Now you say you got back on the 31st day of March from Panama? A. Yes.

Q. And you say that on the 3rd day of April, 1913, you went over to the Central Railroad Company? A. Yes. 20

Q. And told them you had an interest in this property? A. I didn't say that.

Q. What did you say? A. I told them I was the largest individual stockholder, and one-half owner of the company, and that I had been told that property had been sold without my knowledge or consent.

Q. After that did you make any demands for part of the proceeds that were realized from the sale? 30

Mr. Bachman: That is objected to unless it intends to ask whether he did so as an officer of the company.

The Court: I will permit it.

Q. What is your answer to that? (Question read.) A. Individually.

Q. Of whom did you make the demand? A. Mr. Martin. 40

Frank W. McNeal—Cross

Q. Where and when? A. Why, in a suit for conversion of my property.

Q. Is that the first time that you made the demand upon him, in the suit?

10 Mr. Bachman: Will your Honor allow my objection to be a continuing one to these questions?

The Court: Yes. You may have your objection.

Q. (Question read.) A. I made demand upon him as secretary and treasurer of the company on April 3rd for the check paid in balance payment by the Fidelity Company.

Q. You made a demand upon Judge Martin upon April 3rd as secretary and treasurer for the check? A. Yes, sir.

20 Q. Did you make any other demand upon him? A. Yes.

Q. What other demand did you make on him? A. Not on April 3rd.

Q. No, I didn't say on April 3d. A. I made that demand again on him on April 5th at his New York office.

Q. And in what capacity did you make it on April 5th? A. As treasurer of the company.

30 Q. Did you make the demand again on him or on anybody else? A. I did. He offered me \$1,000 for my papers. I advised with my attorney; I refused that.

Q. I don't care anything about the advice of your attorneys. A. I refused the thousand dollars, and on April 8th I agreed with Judge Martin in a letter to accept for my papers I think then \$1,174; they were in the form of notes of the company, notes that have been brought suit for

Frank W. McNeal—Cross

in 1910, but we never could get the trial to action.

Q. Well, when you talk of papers what do you mean, your stock? A. Turned over my stock, the money I had advanced the company in payment for taxes in 1907, payment of water bills in 1907 or 1908. 10

Q. I simply asked you what you meant by saying turning over your papers? A. All the papers that I had.

Q. That was on the 8th of April, was it? A. That letter—I didn't see Mr. Martin that day—I went there and his clerk Wagner was there and I dictated a letter to him; Mr. Wagner wrote it.

Q. That was on the 8th of April? A. That was on the 8th of April. 20

Q. Well, did you make any further demand as either stockholder or treasurer and secretary for the check or a part of the proceeds of the sale? A. Well, only in that conversion suit.

Q. You brought a conversion suit; where did you bring that? A. Brought that in New York.

Q. And when did you bring it?

Mr. Bachmann: That is objected to.

The Court: I will permit it.

Q. When did you bring it? 30

Mr. Bachman: Will that be a continuing objection too?

The Court: Yes.

Q. Do you recall when you brought it? A. No, I can't recall; I can look it up; I think I have a record of it; I have record of it if I may look at my memorandum.

Q. See if I can refresh your memory. Was it about the 18th of April, 1913 when you brought it? A. Yes. 40

Frank W. McNeal—Cross

Q. And do you remember when the case came on for trial in New York? A. It came on May 5th or 7th.

Q. Wasn't it May 6, 1915? A. Well, possibly.

10 Q. And didn't you in that suit try to recover part of the proceeds of the sale of this property?

Mr. Bachman: My objection should be enlarged at this point. If it is endeavored to discredit the witness why, of course, matters of this sort might be material, but to bring out a proceeding of this sort as having any bearing whatsoever on the rights of the Neptune Company to have this deed set aside, it seems to me that it is very far fetched; we say they cannot take an admission of an individual.

20

The Court: You have your objection. If it is admissible for any purpose it is admissible. If your objection is that the best evidence of what he sought to recover is the record itself, that is another thing.

Q. Now what do you say? A. As to that suit?

By the Court: Q. What did you seek to recover in that suit generally? A. One-half of the check for \$2,995.42 that had been given to Mr. 30 Martin.

Q. When did you find out what had been paid for the property? A. On the morning of April 3d, Mr. Lafferty gave me all the figures.

Q. And what did you find out was the purchase price? A. The purchase price of the property was \$5,000.

Q. And did you find out whether any of that purchase price was needed to discharge liens on 40 the property? A. Yes.

Frank W. McNeal—Cross

Q. And how much did you find out was required to clear the property? A. Mr. Lafferty claimed that they had paid all except this \$2,995.-42.

Q. So that everything over and above that had gone to clear the property? A. Not properly; 10
I objected to some of it.

Q. There had been a mortgage on the property that you knew of? A. \$1,000.

Q. And back interest on it? A. I presume so.

Q. And back taxes on the property? A. Oh, yes.

Q. Now, did you testify in this New York action that you brought against Martin? A. Oh, yes.

Q. And did you in that testimony of yours say 20
concerning the purchase money "it is a dandy big, good price, and I have no objection to it at all as far as any price is concerned?" A. I believe I did say that, but I had reason for it.

Q. Is that signature yours? A. That is my signature, yes.

Q. And is the whole letter written in your hand? A. Yes.

Letter marked 1 for identification.

Q. I show you another letter and ask you 30
whether that is your signature and in your handwriting? A. That is mine.

Letter marked 2 for identification.

Q. And I show you a third letter and ask you whether that is your signature? A. Yes.

Q. And in your handwriting? A. Yes.

Marked 3 for identification.

Q. Do you remember whether or not at that meeting in 1902, I think you said it was January, 40

Frank W. McNeal—Cross

do you know whether or not there were any proxies there? A. I don't think so; we didn't consider it necessary.

Q. You did not have any proxy? A. No; I had the stock, I owned the stock.

10 Q. And Mr. Puhlman didn't have any proxy?
A. He owned his stock.

Q. I ask you whether he had any proxy? A. I don't think so; we didn't consider it necessary.

Q. Do you know what became of that check for two thousand nine-hundred and ninety-five dollars and some cents? A. Yes; Mr. Martin had his clerk, Wagner, endorse it as secretary and treasurer and deposit it; I haven't seen the check; that is what is said was done with it, and it was deposited in the Roseville Trust Company.

20 Q. To whose credit? A. The Neptune Mildew & Waterproofing Company.

Mr. Bachman: Let Mr. Hood make the statement and I will let it go in evidence.

Q. I asked him whether he knew. A. Hearsay, that is all; I haven't seen it.

30 Mr. Hood: If you want me to make a statement about it I want to let it go at that, that this particular check was deposited in the Roseville Trust Company to the credit of the Neptune Mildew & Waterproofing Company under an endorsement that it bears upon the back of the check.

Mr. Bachman: And I will say in addition to this statement that Mr. McNeal as secretary and treasurer was not allowed to draw against that account.

Mr. Hood: I haven't said that.

40 Q. Have you as secretary or treasurer of the Neptune Mildew & Waterproofing Company

Frank W. McNeal—Re-direct

drawn against the account in the Roseville Trust Company, or its successors, the Mutual Bank of Roseville? A. No, sir.

By the Court: Q. And I don't suppose you know of your own knowledge whether any other officer of the company has drawn against it or attempted to, do you? A. No, sir. 10

Q. Have you as a stockholder received any distributive part of the money from the Roseville Trust Company or its successor, the Mutual Bank of Roseville? A. No, sir.

RE-DIRECT-EXAMINATION:

Q. What is the date of the mandamus proceeding that has been referred to in your cross-examination? A. January 7, 1915.

Q. Was that a proceeding to have the Supreme Court direct that the corporation recognize your stock? A. Yes. 20

Q. Is that proceeding still pending on this date? A. Yes.

Q. Was the meeting of the corporation held in March, 1916, at which your stock was recognized? A. Yes.

Q. Who was present at that meeting?

Mr. Hood: I insist upon the minutes; I think that is the record. 30

Q. I ask you if that is your signature at the foot of this paper, page 15? A. Yes.

Q. Which of those pages constitute the minutes of the meeting of March 16, 1916? A. From page 12 to 15, inclusive.

By Mr. Hood: Q. May I inquire, that book you have, is this the minute book of the Neptune Miledew & Waterproofing Company? A. Yes. 40

Frank W. McNeal—Re-direct

Q. Beginning from what date? A. From March 16, 1916.

Q. Whose signature is at the bottom of the page where your name appears as secretary of the meeting? A. Hugo Freitag.

10 Q. Is Mr. Puhlman's signature there? A. And attested by Mr. Puhlman as—

Mr. Hood: Are you testifying from the record?

Mr. Bachman: No, I am simply having him identify the signatures; then I will put it in evidence.

I offer in evidence the minutes of March 18, 1915.

20 Mr. Hood: I think I am entitled to the whole of the minute book.

The Court: You are entitled to the whole of it. Which is the minute book, that which Mr. Bachman has or the black covered thing?

A. The one Mr. Bachman has is the minute book.

30 It is conceded that the minutes of a meeting of March, 1916, show that there were present Mr. Puhlman, Mr. Freitag and Mr. McNeal; that Mr. McNeal acted as secretary and treasurer and voted his stock.

Q. When you called upon Mr. Lafferty, with regard to which Mr. Hood asked you how you found out about the figures, was anything said between Mr. Lafferty and yourself with respect to the check for \$2,995? A. Yes.

Q. What did you say and what did Mr. Lafferty say?

40 Mr. Hood: As to the check—I do not

Frank W. McNeal—Re-direct

care whether you have it in or not, very much, but in view of the situation, I don't know as any statement Mr. Lafferty made is admissible.

By the Court: Q. Were you in Panama all during the year 1912? A. No, sir.

10

EXAMINED by the Court:

Q. When did you leave? A. I made two trips to Panama, one in 1911 and one on 1912.

Q. How long a space of time, from what date to what date? A. I left New York March 1st and arrived back in New York on the afternoon or morning of March 31st.

Q. Of 1912? A. Of 1912, yes.

Mr. Bachman: He means 1913.

A. 1913.

20

Q. You left March 1st, 1913 and arrived back March 31, 1913? A. Yes, sir.

Q. You were only there a month? A. Yes, sir.

Q. 1912 you were there a month or longer? A. I was there probably six weeks, eight weeks, in 1912.

FURTHER RE-DIRECT-EXAMINATION:

Q. In what business were you in Panama at the time? A. I had a concession from the Panama government to build a dry dock there.

30

Mr. Bachman: I call for the production of letters of Mr. McNeal to Francis Lafferty dated April 3, 1913.

Q. I show you what purports to be carbon copy of letter addressed to Francis Lafferty dated April 3d, 1913, and ask you if you wrote the original of that letter? A. I did, yes.

40

Frank W. McNeal—Re-cross

Q. And what did you do with it? A. I mailed that to the Fidelity Trust Company in the New York Post Office about 5:30 p. m. the night of April 3d.

Q. Prepaid envelope? A. Yes.

10 Q. Sealed? A. Sealed.

Q. Did it bear your imprint on the outside? A. Yes.

Q. Was it ever returned to you? A. No, sir.

Mr. Hood: I haven't any objection to the offer.

Marked Exhibit C-8.

RE-CROSS-EXAMINATION by Mr. Hood:

20 Q. Directing your attention to the letter of April 3, which is marked 3 for Identification you say "I have to-day stopped payment on the check for \$2,995.42" I want you to tell me what you did to stop payment on that check? A. I notified Mr. Lafferty after I left Mr. Martin's office—

Q. When did you notify Mr. Lafferty? A. On the afternoon of April 3.

Q. By letter or by word? A. Personally.

30 Q. What did you say to him on that subject? A. I said that I had been over to Mr. Martin and demanded that check, and he refused; that the whole thing was a fraud and a swindle on Martin's part, and I demanded that he stop payment on that check.

Q. That is what you told him? A. Yes.

Q. And is that all that you did? A. No; we had pretty hot talk there.

40 Q. I know, but just this talk with Mr. Lafferty in connection with stopping the payment of the check? A. Yes, told him to stop payment on that check, and Mr. Lafferty said—

Frank W. McNeal—Re-cross

Q. I don't care so much what Mr. Lafferty said; I wanted to know what you did to stop payment of the check?

Mr. Bachman: Let him complete the conversation.

The Court: He doesn't have to. The question is confined to what the witness said to Mr. Lafferty with respect to stopping payment on the check. 10

Q. Now is that all that you did to stop payment on that check? A. Then when I got home that night I mailed that to him; I wrote the other letter to Mr. Lafferty confirming my demand to stop payment on the check, on the ground of fraud. I sent those letters to Mr. Martin in an envelope in my handwriting and asked him to forward them to Wagner and Puhlman. 20

Q. Now let us get that straight. Then so far as stopping payment of the check is concerned, all that you did was to have this talk with Mr. Lafferty on the afternoon of the 3d of April? A. Told him to stop payment, yes.

Q. And writing letter to Mr. Lafferty on the evening of that day? A. Yes.

Q. And writing these three letters that I have shown you and which are marked 1, 2 and 3 for identification, in which you say you have stopped payment for the check? A. Yes. 30

Q. That is all you did? A. Those were the letters written at 5:30 that night when I got back.

By the Court: Q. Puhlman and you were not on friendly terms at that time? A. On April 3, no, sir.

By the Court: Q. And when was it that cordial relations were established between you? A. After he had a falling out with Judge Martin. 43

Frank W. McNeal—Re-cross

By the Court: Q. When? A. Why, it was some-time, must have been January or February.

By the Court: Q. What year? A. 1914, because on February 1st I went to Florida and Puhlman had come in and said to me—

10 The Court: I did not ask you that.

A. I guess it was 1915; I made a mistake.

EXAMINED by Mr. Hood:

Q. Do you mean 1915 or 1916?

The Court: Wasn't it just before this meeting of the corporation, March, 1915?

A. No, it was in February—it was in December, 1915 that he first came to me and said what he had done, and told me about his troubles.

20 Mr. Bachman: I offer in evidence letter of Frank W. McNeal dated April 17, 1913, to his brother Lynton, to which D-7 is in answer.

Marked Exhibit C-10.

I offer in evidence letter, Frank W. McNeal to President of defendant, dated April 3, 1913.

Marked Exhibit C-11.

30 Complainant rests.

Mr. Hood: I offer three letters marked for identification.

Three letters marked 1, 2, and 3 for identification, marked Exhibits D-1 1/2, D-2 and

D-3.

40 I also desire to offer exemplified copy of record in the Supreme Court of New York in the case of Frank W. McNeal, complaint

Henry G. Dickensheets—Direct

and William P. Martin, defendant, being the suit of which I inquired of Mr. McNeal when he was on the witness stand.

Mr. Bachman: That is objected to as immaterial, irrelevant and not binding on the complainant.

The Court: It may be marked, and I will deal with it on the argument. 10

Marked Exhibit D-4.

HENRY G. DICKENSHEETS, sworn:

Direct-examination by Mr. Hood:

Q. In 1913 were you in the employ of the Fidelity Trust Company of Newark? A. As a settlement officer, yes. 20

Q. How long had you been in their employ at that time? A. Since November, 1911.

Q. And as such settlement officer did you have the settlement of the title conveying property from the Neptune Mildew & Water Proofing Company to the Central Railroad Company in Jersey City? A. I did.

Q. And did you close that title? A. I did. 30

Q. With whom did you close it? A. Judge Martin, at his office, in the back room, in the Judge's room in the court house.

Q. When? A. Well, I can't remember the date.

Q. I show you these settlement papers and ask you to examine them and ascertain whether or not there is upon them any memorandum in your hand from which you can refresh your memory 40

Henry G. Dickensheets—Direct

as to when the closing took place? A. Yes, there is memorandum on the back showing I closed it at Judge Martin's office at the court house, April 2, 1913.

10 Q. And do you remember what part of the day it was when you closed it with him? A. Between 12 and 1 o'clock, or sometime around there, because Judge Martin afterwards took me out to lunch?

Q. And in closing the matter with him did he pass any papers to you? A. If my recollection serves me right he tendered deed duly executed, and I gave him check.

Q. Is this the check that you gave him? (Handing witness Exhibit C-7.) A. That is it.

20 Q. And is this the deed that he gave you? A. Yes, it has my O. K. on it.

Mr. Hood: I offer that.

Marked Exhibit D-5. (This exhibit is the same as Exhibit C-3, printed under that title.)

Q. Do you recall what the purchase price was of this property? A. No, I don't, because we are in the habit of disposing of a good many titles.

30 Q. Could you refresh yourself from the papers? A. I would be able to if they were submitted. This is original settlement certificate.

Q. Can you tell what the purchase price was? A. Stated \$5,000.

Q. Do you know whether anything had to be paid out of that to clear the title? A. Yes, there is statement of the amounts paid.

Q. Can you say in a lump sum what they were? A. Yes, \$2,004.58.

40 Q. Covering what sums? A. Items of taxes re-

Carl L. Brown—Direct

garding charges that were to be paid by the Neptune Mildew & Water Proofing Company for their own deeds, discharges, etc.

Q. Any mortgage on it? A. Mortgage, yes, sir.

Q. How much is the mortgage? A. \$1,030 with interest.

10

CROSS-EXAMINATION by Mr. Bachman:

Q. Do you know by examining this check whether the date of settlement on the back is the date it reached the Fidelity Trust Company, or don't you know anything about the banking operations at all? A. The check was drawn on the Fidelity Trust Company.

Q. Itself? A. Yes.

20

CARL L. BROWN, sworn:

Direct-examination by Mr. Hood:

Q. Where do you live? A. In Atlanta, Georgia.

Q. And what is your business? A. I am a lawyer by profession.

Q. And what is your present employment as lawyer? A. As examiner of claims for the Fidelity & Casualty Company. 30

Q. How long have you been in that employment? A. Three years.

Q. Before that time where were you employed? A. For a year prior to that I was in the home office of the company.

Q. And before that? A. And before that I was in the office of Judge Martin.

Q. Were you in Judge Martin's office during 40

Carl L. Brown—Direct

1911 and the early part of 1912? A. I was, yes.

Q. And in what capacity? A. Clerk.

Q. As clerk did you ever have anything to do with books that purported to be the books of the Neptune Mildew & Water Proofing Company? A.

10 Yes, I did.

Q. Do you remember when they came to you?

A. The books were brought in the office, I first saw them some six or eight months prior to the fire, the Equitable fire, that occurred on January 9, 1912. A couple of weeks prior to the fire the books were turned over to me for examination; I kept them after that time until the fire.

20 Q. And where did you keep them? A. There was a shelf, a set of shelves just to the left of my desk; the books were a little bit too big to put on my desk and I had put them on the shelf.

Q. And do you know what they consisted of?

A. Yes; there was the stock certificate book; there was the minute book, and I think a stock transfer book.

Q. Then your recollection is that there were three books? A. Yes.

30 Q. Did you have those papers in that place on the evening of the 11th of January when you left your office? A. You mean the night before the fire?

Q. The night before the fire? A. Yes, I did.

Q. And when did the fire come, in the morning or in the afternoon? A. The morning of January 12.

Q. And what became of the contents of the office? A. Everything was burned, everything was destroyed.

40 Q. Now with regard to these books, you say

Carl L. Brown—Direct

you gave them examination? A. Yes, sir.

Q. Will you describe to me as far as you can what the stock book consisted of? A. The stock certificate book?

Q. The stock certificate book? A. That was a pasteboard covered book containing blank stock certificates; I should judge there were about over ninety blank stock certificates, and there had been about a dozen stock certificates that had been used, some of them had been returned and were in the book, the stubs had been filled out below and some of the stubs had not been filled out. 10

Q. Have you any recollection as to what appeared on the stubs and upon the certificates that were returned? A. Yes.

Q. Now tell us all that you can about that? A. My recollection is that stock certificate No. 1 was for ninety-nine shares to Leopoldene Puhlman; that No. 2 was for one share to John Wollney; that No. 3 was for fifty shares to Lynton S. McNeal; that No. 4 was spoiled, marked spoiled; that No. 5 was for fifty shares to Lynton S. McNeal; that No. 6 I think was for twenty-five shares, and I am not so sure as to who they were made to, but my recollection was that they were to John Lamont; No. 7 I am not quite clear on. From there on there was a blank; I suppose there were about a dozen certificates that had been used, and I don't know what became of the balance of them. 20 30

Q. Now these things that you have talked about you gathered from the stubs? A. And returned certificates, such as were there.

Q. Do you remember how many returned certificates were there? A. Yes, about four or five.

Q. You spoke of some certificates that were is- 40

Carl L. Brown—Direct

sued to McNeal? A. Yes, Lynton S. McNeal.

Q. Do you know how they were endorsed? A. Endorsed in blank.

Q. And do you know whether anything appeared upon the face of them as they were in the
10 book? A. No.

Q. Anything written on them? A. No.

Q. Did the word "Cancelled" appear upon them at all? A. No.

Q. Did the word "cancelled" appear upon the stubs? A. No, sir.

Q. Now you have given us, I think, as far as No. 7 with regard to the stubs? A. Yes.

Q. The last certificate that appeared in the book was No. 5 do you say? A. No. 5.

20 Q. That is the returned certificate? A. Returned certificate.

Q. Pasted in or pinned in or how? A. Pasted in, as I remember it.

Q. As to No. 6, was there a stub? A. There was a stub, yes.

Q. But you don't recall dates? A. I don't recall all dates; it was for twenty-five shares, that much I do remember; the name to whom it was issued I am not quite clear; my impression how-
30 ever is that it was to John Lamont.

Q. The certificate itself was not there? A. The certificate itself was not there.

Q. Was there any entry on the stub? A. I believe there was.

Q. Do you recall what that was? A. No; I have been trying to recall; my impression was that it was for one share, but I may be mistaken on that.

Q. Was the certificate there? A. No, sir.

40 Q. No. 8. A. There was no certificate there, and no entry on the stub.

Carl L. Brown—Direct

Q. No. 9? A. No certificate or no entry.

Q. Were there any further entries on the stub after that? A. No.

Q. But there were some certificates that you say were not in the book? A. That were not there, yes.

10

Q. Did the name Frank McNeal appear from any entry in the stock book? A. No, sir.

Q. Now tell us about these stock transfer books
A. I have a recollection that the stock transfer book was a longer book, a book about the same shape as the stock certificate book, red lined inside; there was some writing in it but I don't remember what it was.

Q. Do you remember making an examination of the book? A. Yes, I remember opening it up as a matter of curiosity.

20

Q. Can you say whether or not in that stock transfer book the name Frank McNeal appeared?
A. I didn't see it, no.

Q. Now tell us about the minute book. A. The minute book was a pasteboard covered book or rather a black covered book, a dingy black, about I should judge twelve inches long by about ten inches wide; it had the minutes in; the minutes had been written up for, I expect, one or two meetings, three meetings.

30

Q. Do you recall whether or not it had the meeting of the incorporators in it? A. It had the first meetings in it.

Q. Do you recall whether it had the by-laws in it? A. Yes, the by-laws were in it.

Q. Did you examine the incorporator's minutes for the purpose of ascertaining the result of the meeting as to officers? A. No; I examined it out

40

Carl L. Brown—Cross

of a matter of curiosity more than anything.

Q. Did you gather in your examination who was elected president and who was elected to fill the other officers? A. Yes.

Q. Will you tell us what you gathered from it?
10 A. Leopoldene Puhlman had been elected president, John Wollney, vice president, and Lynton S. McNeal was elected secretary and treasurer.

Q. Were there any minutes in the book beginning 1902 and thereafter? A. No, sir.

Q. Were there any minutes in the book signed by Frank McNeal, secretary? A. No, sir.

Q. Either in his own hand or in typewriting?
A. No, sir.

Q. Did the name of Frank McNeal appear in
20 the minute book? A. Not that I recollect.

Q. I call your attention to waiver of notice that bears the name L. S. McNeal; I see your own signature Carl L. Brown; is that your signature? A. That is my signature, yes.

Q. Do you know the signature of Rudolph Puhlman? A. I think I would recognize it; it has been three or four years since I seen it.

Q. Do you remember whether this waiver of notice was signed all at the same time? A. It was.

Q. As to some of them or as to all of them?
30 A. Mr. McNeal, Mr. Puhlman and myself signed at the same time; we were all present.

Q. At that time do you know whether L. S. McNeal's name was there? A. I am not clear on that.

CROSS-EXAMINATION by Mr. Bachman:

Q. I show you Exhibit C-5 and C-6 and ask you
40 if the certificates in the stock book which you said

Carl L. Brown—Cross

you examined conformed in general, the printing, to those certificates? A. Yes, sir, they did.

Q. And did you see the seal? A. Yes, I think so, yes.

Q. And did that seal conform to the one that you saw before it was destroyed? A. Yes. 10

Q. You signed a waiver of notice; how did you come to find that you had to sign a waiver of that sort? A. I was requested to sign it, sir; I held a share of stock at the time.

Q. Where did you get that stock? A. It was assigned to me by Maxwell Wagner.

Q. Do you know where he got his stock? A. It was assigned to him in my presence; I don't know where he got it; that is the way he had his share, in my presence. 20

Q. He had a certificate of stock? A. Yes.

Q. And you never saw the assignment by which he got the certificate of stock that he himself held, did you? A. No.

Q. And your idea was to break up that certificate and make one share for yourself? A. Yes.

Q. Did you pay anything for the stock? A. I did not.

Q. You were simply a dummy director for someone else, were you? A. Exactly. 30

Q. Did you take any steps to find out what your liabilities were as a stockholder of this company?

The Court: What difference does that make? Question excluded.

Q. Who brought the books of the company to you? A. Judge Martin turned them over to me.

Q. How long did you have them in custody? A. About two weeks. 40

Carl L. Brown—Cross

10 Q. And all this time out of curiosity you discovered the fact you have testified to? A. No, sir, I said I had seen them about six months prior to the time they were turned over to me; Judge Martin had had them at the time; about two weeks before the Equitable fire the books were turned over to me for inspection for work on them; I was busy at the time and I glanced them over.

Q. Referring to your signature on the waiver of notice did you see Mr. Small's signature on the left before you signed that? A. I don't recall, sir.

Q. Was the top filled out? A. Yes.

Q. This writing? A. Yes.

Q. That is, the day of the meeting? A. Yes.

20 Q. And you say you are not clear about the other two signatures being added in your presence? A. I am not clear about that; these signatures of Maxwell Wagner and Rudolph Puhlman were added while I was there.

Q. When you examined the stock certificate book and found the stock certificates were pasted in did it occur to you they were pasted in because they were cancelled? A. No, sir.

30 Q. As an attorney at law you know that stock certificates that are pasted in stock certificate book are apparently at least cancelled certificates?

Mr. Hood: I object; I don't know that the gentleman is qualified to testify as an attorney at law. After all, what we want to do is to get the fact, and let the Judge pass upon it.

The Court: I will exclude the question. What is its relevancy and materiality?

40

Carl L. Brown—Cross

Q. Was the whole certificate pushed under the stub and pasted in? A. No, I think it was pasted in about an inch.

Q. Over the face of the stub? A. Under the face of the stub, the pasting in, putting the certificates in, they were not all put in separate.

Q. We don't care about that. Did you take the trouble to see whether any minutes might have been written and slipped in loosely? A. The minute book was a permanently bound book. 10

Q. But you know as a fact minutes are written on the loose leaves and pasted in even a permanently bound book? A. Sometimes, yes.

Q. And it is quite a practice too, is it not, within your knowledge? A. Yes.

Q. Did you, when you received these books from the party that gave them to you call any attention to the fact that there were loose leaves in the book? A. Did I call it to the attention of anybody? No, sir. 20

Q. Have you discussed this case with anybody since you knew it was commenced? A. No, sir, not prior to last evening.

Q. Last evening weren't you more or less led by the statements made to you as to what certificates had been issued and what certificates had not been issued? A. Most emphatically not, sir. 30

Q. According to the statement made in answer to Mr. Hood's question that there was not two hundred shares issued, isn't it a fact that certificate No. 1 was for fifty shares to Leopoldene Puhlman? A. No, sir, my recollection is that it was ninety-nine shares.

Q. And second one to John Wollney for one share? A. Yes. 40

Carl L. Brown—Cross

Q. And third one to L. S. McNeal for one share?

A. That is right.

Q. And one to John Wollney for forty-nine shares? A. No, sir.

Q. And one for fifty shares? A. Yes.

10 Q. That makes two hundred shares? A. Yes.

Q. According to your statement you are lacking; how do you account for that? A. I don't believe I was lacking fifty shares.

20 Q. If the Court will permit me I will ask you to state over again how these shares appeared in the certificate book according to the stub? A. I recall stub No. 1 was for ninety-nine shares to Leopoldene Puhlman; No. 2 for one share to John Wollney; No. 3 for fifty shares to Lynton S. McNeal; No. 4 I recall was spoiled; No. 5 for fifty shares to Lynton S. McNeal.

Q. You mentioned John Lamont as receiving twenty-five shares according to another stub? A. Yes.

Q. Was there nothing to indicate on the previous stub that some certificate had been broken up so as to make twenty-five shares? A. Yes; certificate No. 1.

30 Q. And that was broken up how? A. Twenty-five shares were issued out of certificate No. 1 I presume.

Q. No presumption. What is your knowledge? A. I have no recollection on the point.

Q. Then there would be two hundred twenty-five shares issued, according to the stubs you stated? A. No, sir.

Maxwell Wagner—Direct

MAXWELL WAGNER, sworn:

Direct-examination by Mr. Hood:

Q. What is your business? A. I am stenographer.

Q. And were you ever stenographer for Judge Martin in New York? A. Yes. 10

Q. When did you serve him? A. Since January, 1911.

Q. Were you his stenographer since 1911? A. Yes.

Q. Did you know Mr. Lynton McNeal? A. I met him once.

Q. Where did you see him? A. I met him in Judge Martin's Office in New York, in Judge Martin's private office in New York.

Q. Do you know who was there with him? A. Mr. Puhlman was there and Judge Martin was present. 20

Q. Which Mr. McNeal was it that was there? A. Lynton S. McNeal.

Q. You know the two gentlemen, do you? A. I know both Lynton and Frank.

Q. Now is that the only occasion you saw him in Judge Martin's office? A. That is the only occasion.

Q. Did you hear any conversation passing between Mr. Lynton McNeal and Judge Martin? A. Yes, sir. 30

Q. Where were you, how were you located with respect to them at that time? A. My desk was located in an outer office about ten feet from Judge Martin's private office, and at the time Judge Martin's door was open.

Q. Was open? A. Was open. 40

Maxwell Wagner—Direct

Q. Did you on that occasion hear Lynton McNeal say to Judge Martin in answer to Martin's question—

Mr. Bachman: This is leading; I object to it.

10 Q. (Continuing.)—In answer to Judge Martin's question "Why did you give this stock to Puhlman" say "Why, I was under obligations to him, I was through with the company and I didn't want to have anything more to do with it, and I gave it to him as a present, made him a present of it"?

Mr. Bachman: That is not in that record at all, it is statement right out of the record in another case, and Mr. Hood is leading his witness.

20 The Court: He is entitled to; that is the only possible way he can get it.

Mr. Bachman: I object to this question on the ground that it is leading the witness and asking him with respect to his own testimony in another proceeding.

Q. What is your answer to that question? A. Yes; I heard substantially what you just read.

Q. Did you ever have anything to do with the Neptune Mildew & Water Proofing Company? A.

30 Yes, sir.

Q. When did your connections with them begin?

A. Early in 1912 I believe.

Q. Early in 1912? A. 1912.

Q. What connection did you have, what capacity? A. The company was to be reorganized, and I was requested to act as secretary and treasurer after an assignment of stock had been made.

Q. Did you receive assignment of stock? A.

40 Yes, sir.

Maxwell Wagner—Direct

Q. From whom did you receive an assignment of stock? A. From Lynton S. McNeal.

Q. And for how many shares? A. One hundred shares.

Mr. Bachman: I object. If there is a written paper I would like to have it produced. 10

Mr. Hood: I would like very much to produce it if I could.

The Court: I will consider at this time that the paper is lost. Under those circumstances evidence of its contents may be admitted. The witness may testify as to what was in it, or he may identify a copy that he says is correct.

Q. Mr. Lynton S. McNeal assigned how many shares? A. One hundred shares. 20

Mr. Bachman: I object to that question. Let them show what the paper contained when he received it.

The Court: Objection overruled.

Q. From whom did you get your shares? A. Lynton S. McNeal.

Q. What sort of an instrument was delivered to you? A. It was assignment written on one sheet of paper, legal cap. 30

Q. That is the paper we have discussed, and how many shares did it assign to you? A. One hundred shares.

Q. I will show the witness a printed copy that appears as Exhibit D-1, record in the New Jersey Supreme Court between Frank McNeal, relator—will you look at Exhibit D-1 and tell me whether according to your recollection the paper you got from Mr. McNeal contained those words? A. Yes, sir. 40

Maxwell Wagner—Direct

10 Q. "Know all men by these presents. That the undersigned, for good and valuable consideration received, has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over to Maxwell T. Wagner, the right, title and interest of the undersigned as a stockholder of the Neptune Mildew & Water Proofing Company to the extent of one hundred shares of the capital stock thereof, and hereby requests and directs the said company to issue a certificate for said share to the aforesaid transferee or his nominee or assign," dated March 1, 1913, signed L. S. McNeal, in the presence of A. S. Small. After you got to be the owner of the hundred shares what did you do with them, transfer any?

20 Mr. Bachman: I object to the form of that question, after you became the owner of the shares; that is an assumption not warranted by the facts.

The Court: That may be so but it won't change my mind at all.

A. As I recall it, there was a meeting in Jersey City, and I assigned one share of the stock to Mr. Carl L. Brown.

30 Q. Retained the other? A. Retained the ninety-nine.

Q. Do you recall when that meeting took place? A. I can refresh my recollection from the minutes; I believe it was March 6, 1913.

Q. And at that meeting were you elected to any office in the company? A. I was elected a director and I believe secretary and treasurer.

40 Mr. Bachman: I make the same objection. It is a continuing objection.

Maxwell Wagner—Direct

The Court: Yes; we are not before a jury, Mr. Bachman.

Q. And did you act as secretary at that meeting? A. I did.

Q. And for how long thereafter? A. Up to probably about a year ago. 10

Q. I show you here a book and ask you what it is? A. This is the minute book of the Neptune Mildew & Water Proofing Company since I have been secretary and treasurer of it.

Q. And your signature as Maxwell Wagner, is that your signature as secretary of the company? A. Yes, sir.

Q. Bringing to your attention the waiver of notice signed by McNeal and Brown, I see the name Maxwell Wagner on there; is that your signature? A. Yes, sir. 20

Q. Do you know anything about the signature that follows that? A. It was made in my presence, that is by the same pen I believe, by Mr. Puhlman.

Q. There follows that meeting, or rather the waiver of notice, the set of bylaws; do you know whether they were acted on at that meeting? A. Yes, sir.

Q. And inspector's oath and report? A. Yes. 30

Q. Occurred at that meeting? A. Yes, sir.

Q. Now, then, there is a minute of special meeting? A. There was a special meeting of the directors held after the stockholders meeting.

Q. And that is signed by you as secretary? A. Yes.

Q. And does that record the minutes of that meeting? A. Yes.

Q. Then follow waivers—no, notices of meet- 40

Maxwell Wagner—Direct

ing, signed by Brown and Puhlman and Wagner; are those their signatures? A. Yes.

Q. Affidavit? A. That is my affidavit.

Q. As secretary? A. As secretary.

Q. Treasurer's bond? A. Treasurer's bond.

10 Q. Signed by whom? A. Signed by myself.

Q. And somebody else? A. William P. Martin.

Q. You were treasurer also? A. I was treasurer.

Q. Then follows another minute signed by you, Wagner, as secretary? A. As secretary, yes.

Q. Another notice of meeting? A. That is my signature.

Q. There appears also on this page entry of a special meeting of the 4th of April, 1913 of the directors, with the signature of Rudolph Puhlman as president? A. As president.

20 Q. Is that his signature? A. Yes.

Q. All the minutes in here are signed by you as secretary, are they? A. I don't say that.

Q. Let us see how far you go? A. Up to the sixteenth day of November, 1914.

Q. Up to the 16th day of November, 1914 they are your minutes as secretary? A. Yes.

30 Q. That is your last meeting, isn't it? A. The last meeting at which I attended.

Q. Now in these minutes are there any resolutions there by the board of directors or by the stockholders with reference to the sale of real estate? A. Yes, sir.

Q. Will you direct my attention to them, please?
A. Well, at the stockholders meeting on March sixth it was represented to the meeting that the company had received an offer to sell the property to the Central Railroad of New Jersey, of

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Maxwell Wagner—Direct

its land in Jersey City, and there was a resolution authorizing the directors to go ahead and consummate the sale.

Q. Accepting the offer and directing the sale to be consummated? A. Yes.

Q. That is, on a directors meeting or stockholders? A. That is stockholders meeting. 10

Q. Now are there any resolutions on the part of the directors? A. Yes; there was a directors meeting on the same day, later, at which the president was authorized to sell the property to the Central Railroad of New Jersey for five thousand dollars.

Q. Read to us that portion of the minutes that relates to that? A. "It being represented to the meeting that the Central Railroad of New Jersey had offered to purchase from the company certain lands and premises owned by it, located in the City of Jersey City, and known as 'All those three certain lots, tracts or parcels of land and premises, etc, situate, lying and being in the city of Jersey City, Hudson County, New Jersey;' and which on the map entitled 'Map of Desirable lots for sale, being a portion of the Arbuckle estate, Jersey City, New Jersey' " then follows description "for the sum of \$5,000, and that the contemplated sale by this company of said property was approved by the stockholders at a meeting held on the sixth day of March, 1913, at which meeting the board of directors were authorized and directed to carry out said sale; on motion duly made and seconded it was resolved that the said agreement be hereby accepted, and the president and the secretary be and are hereby authorized to execute the instruments necessary to con- 20 30 40

Maxwell Wagner—Direct

summate the payment by the purchaser of the purchase price"; then the following resolution: "On motion, duly made and seconded it was resolved that the treasurer be and is hereby authorized to open a bank account on behalf of the company
 10 with the Roseville Trust Company, and said bank is hereby authorized to make payments according to the check signed by the treasurer and countersigned by its president".

Mr. Hood: I offer the minute book.

Mr. Bachman: I object to it on the ground that it does not bind the complainant.

Q. Well, now, you say that you were also, or your record shows that you were also the treasurer of the company? A. Yes, sir.
 20

Q. And that there was a resolution to open a bank account in the Roseville Trust Company?

A. Yes, sir.

Q. Did you open such an account? A. I did.

Q. And with what did you open it? A. With the check received from the Central Railroad Company of New Jersey for \$2,995.42.

Q. Is this the bank book? A. Yes, that is the bank book.

30 Q. And when does it show the deposite of the check? A. Shows deposit on April 4, 1913 for the full amount of \$2,995.42.

Q. This is by the Mutual Bank of Roseville, Newark, New Jersey, they are the reorganizing company? A. February 24, 1914, balance \$1,005.43.

Q. Do you know what that was for? A. That was the dividend that they paid.

40 Q. Dividend they paid on the Roseville Trust

Maxwell Wagner—Cross

Company? A. On the Roseville Trust Company.

By the Court: Q. What was the deficit? A. \$500 in the account of the Roseville Trust Company.

Q. In addition to this did you get as a dividend on the Roseville Trust Company deposit any shares of stock in the Mutual? A. Yes, we got one, and I believe one and a third shares of the new bank. 10

Q. Do you know what its value is? A. I understood they were worth about \$400.

Q. Per share? A. No, what we had.

By the Court: Q. Where are they? They are still in your possession, are they? A. Yes.

Q. As treasurer of the company? A. Yes. Made out to the Neptune Mildew & Water Proofing Company being certificate No. 3045 for one hundred and thirty-five and seventy-two ten thousandths share. 20

Recess.

CROSS-EXAMINATION by Mr. Bachman.

Q. Did you pay any money out of the Roseville Trust Company account by check, \$500? A. Yes, sir.

Q. To whose order? A. Order of William P. Martin. 30

Q. What was that for? A. That was for legal services.

Q. You had spoken about holding ninety-nine shares of this corporation; now is that a fact? A. Yes.

Q. For whose account do you claim to be holding it now? A. For whose account? 40

Maxwell Wagner—Cross

Q. Yes. A. For my own account.

Q. How much did you pay for the stock? A. I didn't pay anything for it.

Q. Well, do you claim to own it by virtue of a gift? A. No, by virtue of an assignment; there
10 was no consideration of the assignment; it might have been a dollar.

Q. Do you remember that assignment? A. Yes.

Q. Did you run it off on a typewriter yourself?
A. No, sir.

Q. Was it printed in your office? A. No, sir.

Q. As a matter of fact didn't it come to you blank and have your name written in afterwards?
A. No, sir.

Q. Who wrote your name in? A. I don't know;
20 it was done in Jersey City I understand.

Q. Who handed you the assignment? A. Mr. Milton.

Q. John Milton? A. John Milton.

Q. Did you notice that it had interlineations like the paper I put before you? A. Well, it had inserted in pen my name Maxwell T. Wagner; there was a "T" in there, that was not my correct name, and it had in there \$100 written in ink.

Q. And did it have this in there, the word
30 "share"? A. That I don't recall; my recollection is that it had "shares," but I am not too sure; then it had on there "L. S. McNeal" and dated March 1, 1913, that was written in ink.

Q. By whom? A. I don't know.

Q. Do you recognize any of the hand writing on the paper? A. No, I don't recognize any hand writing except possibly the signature, and I don't know as I recognize that either, that is L. S. Mc-
40 Neal.

Maxwell Wagner—Cross

Q. Was there any similarity between the signature of L. S. McNeal and Maxwell T. Wagner's name? A. No, there was no similarity.

Q. And no similarity of any of the other interlineations either with Mr. McNeal's signature?

A. No.

10

Q. If you paid nothing for this stock to whom do you feel as if you were accountable for the stock as a present holder of it?

Mr. Hood: I object.

The Court: What difference does it make? I will permit the answer; I cannot see its materiality though.

Q. (Question read.) A. To Mr. Puhlman.

Q. Are you aware of the fact that Ruldoph Puhlman is bankrupt?

20

Mr. Hood: I object.

The Court: I exclude that. What possible use is there in that?

Q. Have you the certificate at the present time for ninety-nine shares of the stock? A. It is here I believe.

Q. And it is endorsed on the back by your name and a witness? A. You are talking about the original certificate?

Q. No, certificate of the present time. A. What is your question. 30

Q. I ask you if it is endorsed on the back with your signature and witness' signature besides?

A. I don't recall; I think it is, but I am not sure.

Q. Will you tell me whether you are not the custodian of the papers as far as you understand your relations with the Neptune Company to be, are the papers of the company? A. Well, I have

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Maxwell Wagner—Cross

the minute book of the company, I have the pass books and I have the check book.

10 Q. Why haven't you got the original of the assignment that I put before you know? A. I did have it until a year ago when it was offered in evidence and disappeared.

Q. Wasn't it returned to your attorney? A. No, not as far as I know, it may have been, but I don't know.

Q. Did you state as far as you can say that is a correct copy of the typewriting and the writing that was on the original paper that you call an assignment form L. S. McNeal? A. Except as I qualified, I don't know about that, about the shares; I think the "S" was in there.

20 Mr. Bachman: I offer that copy in evidence.

Marked Exhibit C-9.

Q. You heard Mr. Brown testify that he paid nothing for his stock either, did you not? A. Yes.

30 Q. So that at the meeting of the stockholders on March 6, 1913, assuming your view of the case, there was represented the Leopoldene Puhlman stock and your stock for which you paid nothing, and one share of stock Mr. Brown paid nothing for, is that right? A. That is right.

Mr. Hood: That made the two hundred shares.

Q. That made the two hundred shares as a mathematical proposition, and these were the shares that voted, as you say, to accept the offer of the Central Railroad of New Jersey of five thousand dollars for the real property of the company? A. Yes.

40 Q. Did the company own any other real prop-

Maxwell Wagner—Cross

erty besides this? A. Not to my knowledge.

Q. And were these three, Mr. Puhlman and yourself and Mr. Brown elected directors at that time? A. Mr. Puhlman, Mr. Brown and myself, yes.

Q. And were you three the directors who carried out, again accepting your view of the case, instructions of the stockholders with reference to the acceptance of the offer of the Central Railroad of New Jersey and the execution of a deed and its delivery? A. Yes. 10

Q. Did you ever see the original certificate book? A. The one that was destroyed?

Q. Yes. A. I saw the book, but not its contents; I saw the book on Mr. Brown's desk.

Q. Isn't it a fact that Mr. L. S. McNeal was summoned to Mr. Martin's office for the purpose of discussing the will of Mrs. Puhlman which had been lost? A. Yes. 20

Q. Didn't you state this in the mandamus proceeding? Mr. Puhlman had related the whole transaction to Judge Martin and Judge Martin says, "Now I want this confirmed, you tell me all about Lynton McNeal, you get him down here," and they got him down there on that day, and he wrote for him, and he came down there and dictated a statement to him about the will, how the will was made up and what he remembered about it. 30

The Court: I will admit it.

Mr. Hood: I object.

A. Yes.

Q. Do you remember testifying also in the mandamus proceeding as follows; in answer to a question of which this is the answer, "Oh, no, no, 40

Maxwell Wagner—Cross

the door was open; I went to the door to find out what the Judge wanted, and I stood there while I was waiting there these people were talking, and then he said, "Wagner, take this statement of Mr. McNeal about the will, and I sat down, and took

10 A. Yes, sir.

Mr. Hood: I object to it.

The Court: I will admit it. It is improper. It is only proper for the purpose of contradicting. It certainly does not contradict anything the witness has testified to in his direct.

Q. Who was your successor? A. I don't understand you.

20 Mr. Hood: I think the minutes ought to show that.

The Court: I will admit it.

Q. Who is your successor as treasurer? A. I have no successor; as far as I know I am still treasurer.

Q. When this Exhibit C-8, which is supposed to take the place of the original of your answer was displayed to you did you ask any questions in regard to those interlineations, especially that "hundred" between "one" and "share"? A. No,
30 sir.

Q. Whose statement did you take as the one upon which you might rely as believing that this was a straight paper? A. Well, I took no statement, but I took it to Mr. Milton's office who prepared it and I took it for granted that was all right.

Q. Did you ask Mr. Milton why that word "hundred" was inserted between "one" and
40 "share"? A. No, sir.

Maxwell Wagner—Cross

Q. Who told you that one hundred shares had been issued in the name of Lynton S. McNeal? A. Who told me? Well, I believe I overheard first that Mr. McNeal had said he gave Puhlman his stock for a hundred shares.

Q. That is the first time you said a hundred 10 shares when you testified in the mandamus proceedings. I ask you how you learned Mr. L. S. McNeal had a hundred shares of stock? A. I don't know that I can answer that.

Q. Although you say at the time that word "hundred" was not in the handwriting of L. S. McNeal, that is your assumption? A. That is my assumption.

Q. It did not invite your suspicion at the time? A. No. 20

By the Court: Q. Was the word "one" in the handwriting of Mr. McNeal? A. No, sir.

Q. It was typewritten. In brief, you acted in this matter solely for someone else and did not question your instructions?

The Court: Isn't that apparent.

Mr. Hood: I now desire to offer an exemplified copy of record in Hudson County in the matter of the estate of Leopoldene Puhlman deceased, in the matter of the 30 probate of the destroyed will.

Mr. Bachman: I object, that it is not material.

Marked Exhibit D-6.

Lynton S. McNeal—Direct

LYNTON S. McNEAL, re-called:

Direct-Examination by Mr. Hood:

10 Mr. Hood: I ask you gentlemen to produce a letter of April 21, 1913 written by L. S. McNeal to Frank McNeal.

Mr. Bachman: We have not such a letter.

Mr. Hood: You admit this is a copy of C-5?

Q. Mr. McNeal, you say that you signed this assignment of stock at Mr. Puhlman's request at New Bedford? A. Yes.

20 Q. And was that an assignment of a hundred shares of stock or one share of stock? A. It was for one share, the original assignment.

Q. In writing to your brother on the 21st of April, 1913 did you not say "By my assignment of one hundred shares of Neptune Mildew & Water Proofing Company, dated March 1, 1913."

A. I don't remember saying that, but probably.

The Court: The record shows you did. A. If the record shows I did, I did.

30 The Court: If the record shows you did how can you now say the original assignment was for one share? A. I saw the original assignment at the Mandamus proceeding.

By the Court: Then why did you write to your your brother prior to the mandamus proceeding, referring to assignment of one hundred shares? A. Because my original stock was one hundred shares.

Frank McNeal—Direct

By the Court: Q. But you had only assigned one share? A. Only one share as I recollect.

By the Court: Then why did you write to your brother you had assigned one hundred? A. I hadn't.

By the Court: Q. That isn't the question. Why 10
did you write to your brother you had assigned one hundred? A. My brother had written to me stating I had assigned his one hundred shares.

FRANK McNEAL, re-called:

Examined by the Court:

Q. When did you first ascertain that your 20
brother had assigned a hundred shares of the stock? A. On the morning of April 3 Judge Martin told me that my brother has assigned one hundred shares of stock.

Q. Is that the only way you knew he had assigned it, merely by Judge Martin's statement? A. No, sir; on the morning of April 5, in his office he produced a paper like this; he says, "There you recognize, is that your brother's signature;" I said, "Yes;" "Well" he says, "there is a copy 30
of his assignment for one hundred shares," so I assumed the original was for one hundred shares, but when I saw the original—

Q. I didn't ask you that. Have you a copy of your letter of April 21 to which the letter of April 21, 1913 was a reply? A. Yes, I think it is in the book there.

Q. No, it isn't in the book. A. In one of those 40

William P. Martin—Direct

pages I think you will find it, and, if not, I have a copy in my papers.

By Mr. Hood: Q. Have you that letter here? A. I may have it here; if I haven't I have got a copy if it.

10 Mr. Hood: I offer a letter of L. S. McNeal dated April 21, 1913, a copy of which appears on page 67 of the record in the New Jersey Supreme Court in which Frank McNeal was relator.

Marked Exhibit D-7.

WILLIAM P. MARTIN, re-called:

20

Examined by Mr. Hood:

Q. Judge, you were practicing law in New York in 1911, 1912 and 1913? A. Yes, as much as I could.

Q. And did you have an office in the Equitable Building prior to the 9th of January 1912? A. I did, yes.

Q. And was there a fire on January 9, 1912? A. Yes, early Tuesday morning January 9, 1912.

30 Q. What can you say as to the effects of the fire on the contents of your office? A. Everything was destroyed except the contents of the safe.

Q. Did you have at that time in your employ Mr. Brown who was a witness in this case? A. Yes, I did.

Q. And how long had he been in your employ? A. I don't remember exactly, but I think for a
40 year or two, maybe more.

William P. Martin—Direct

Q. And did you also at that time have in your employ Mr. Wagner? A. Yes.

Q. The gentleman who was on the stand? A. Yes.

Q. How long had he been in your employ? A. About a year, year and a half perhaps. 10

Q. Do you know anything about any of the books of the Neptune Mildew & Water Proofing Company? A. Mr. Puhlman brought me a stock certificate book and a minute book, and the name in it was the Neptune Mildew & Water Proofing Company. There was some stock in the stock certificate book, and there was an instrument which purported to be the original will of Leopoldene Puhlman; there were some papers in addition to those which I have mentioned, and the exact nature of them I do not recall now. 20

Q. Do you know how long before the fire you received those papers from Mr. Puhlman? A. I think it was two years; it was a long time at all events.

Q. Did you at any time examine them? A. I did.

Q. Have you any recollection as to the contents of the minute book or the stock book? A. I have.

Q. What can you tell us as to the contents of the minute book? A. The minute book was not printed or typewritten, and it was all in the handwriting of some person, and there were not very many pages of the minute book occupied; it was a small informal sort of book to my mind, and it contained, as I remember it, minutes of what seems to have been to my mind a meeting of the incorporators or stockholders and a meeting of the board of directors, and I think there was a 40

William P. Martin—Direct

subsequent meeting of the board of directors, but I don't remember any more than that.

Q. Can you say whether or not the book contained the minutes of meetings extending from 1902 to 1911 or 1912? A. I can.

10 Q. Were there any such? A. I didn't see any such, no, sir.

Q. Were there any minutes in that book that bore the signature of Frank McNeal as secretary? A. No, sir.

Q. Either in his own handwriting or typewriting? A. No, sir.

Q. Do you recall from reading the minutes as to who were the officers of the company upon its organization? A. Yes; Leopoldene Phulman was
20 elected by the board of directors as president; Wolleney, I think his name was John, was elected vice-president, and Mr. Lynton S. McNeal was secretary and treasurer.

Q. And do you recollect who were elected directors? A. Those three persons I have just named were directors.

Q. Do you recall whether or not there was anything in the minutes to show any change in the directorate or in the officers of the company there-
30 after? A. Not in the official legal offices; there was an action either at that original meeting of the board of directors or at the second one to which I have referred in which Ruldoph Puhlman was appointed or elected general manager or superintendent; it may be that both words were employed.

Q. But I ask you whether or not there was any change, so far as the minute book shows, in the
40

William P. Martin—Direct

directorate or in the officers of the company? A. No, sir.

Q. Was there any mention of Frank McNeal in the minute book? A. No.

Q. Now with regard to the stock book, what do you remember about that? A. You mean with reference to the contents of the stock book when it came to me? 10

Q. Yes. A. There was a certificate issued to Leopoldene Puhlman for 99 shares of the capital stock of the company; there was a stub and a certificate issued to John Wollney for one share, and there was another certificate issued or two to Lynton S. McNeal.

Q. Is that all you can remember of it? A. And then there was some certificate pulled out of the book and there was nothing on the stub that is to say, pulled out, I mean the certificates were not there, and stub was there and it was blank. 20

Q. Were there any entries in the book tending to show that Frank McNeal was the owner of any stock of that company? Do you recall whether or not you examined the certificate of Lynton McNeal to see whether any assignments had been void, or anything written? A. The assignment of the Lynton McNeal stock was in blank, that is to say his name was attached, and I think the witness and name of the assignee or transferee of the stock was left blank, there wasn't any name written in. 30

Q. Was that certificate back in the book? A. When I received it from Puhlman my recollection is that it was in the book loose.

Q. Do you know whether you did anything with it? A. I do not; I may have attached it by putting it or pasting it in, I don't know. 40

William P. Martin—Direct

Q. Do you recall whether or not there was written anything or not on the face of this certificate of Lynton McNeal? A. I don't recall anything on the face of it.

10 Q. As far as your memory serves you was the word "cancelled" written twice in red ink on the face of it? A. No.

Q. Was there anything written on the stub in red ink? A. No.

Q. Did the word, "Cancelled" appear upon the stub? A. No.

Q. In red ink or any other ink? A. I didn't see the word "Cancelled" with reference to Lynton S. McNeal's stock.

20 Q. Did you ever see Lynton McNeal in your office in New York? A. Yes.

Q. Do you recall about when it was that you saw him? A. Yes, sir.

Q. About when was it? A. I think around Christmas Holidays of 1912, sometime in December.

Q. Did you speak to him at that time about his quantity in the Neptune Mildew & Water Proofing Company? A. I did.

30 Q. And did he then in answer to this question put by you, "why did you give this stock to Mr. Puhlman" say "I was under obligation to him, I was through with the company and I didn't want anything more to do with it, and I gave it as a present."

Mr. Bachman: I object to that as being read out of another man's testimony, and I object to it on the ground that it is incompetent and immaterial.

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William P. Martin—Cross

The Court: I think it is the only proper way to do it. I don't know where Mr. Hood gets his information upon which he bases that question; he can ask the question from a piece of paper that is in his hands, that is all.

10

A. My recollection is that substantially that was said, but I don't recall those exact words.

Q. Did you have any occasion to hand the books of the Neptune Mildew & Water Proofing Company to Mr. Wagner? A. You mean Brown?

Q. To Mr. Brown? A. Yes.

Q. Do you know when it was that you handed them to him? A. It was sometime before the fire, a short time; this case had been knocking around in the office for a very long time and nothing done, 20 and I finally turned it over to Brown and told him to tabulate the whole thing and try to give me his opinion about the proper way to handle the whole situation.

Q. Did you see the books after you turned them over to Brown? A. Yes.

Q. Where were they? A. I saw them in his desk, and I saw them I think on a shelf along side of his desk; he was in a corner of the outer office, and there was a big bookcase, a lot of shelves and 30 I think he used it, used one of those shelves as a surplus for material from the desk.

Q. Do you recall when you saw them there the last before the fire? A. A few days before.

CROSS-EXAMINATION by Mr. Bachman:

Q. I show you Exhibits C-5 and C-6, and ask you whether that is a general form of the certificate in printing, etc., as the certificate that ap- 40

William P. Martin—Cross

peared in the stock certificate book as you testified to? A. Yes.

Q. Now when you saw the stubs of two or more of these certificates with no certificates themselves attached did you make any inquiry of Mr. Puhlman to see what became of these certificates?
10 A. At that particular time?

Q. At any time at all? A. Yes.

Q. What did he say and what did you say? A. Mr. Puhlman informed me that Lynton S. McNeal had gotten tired of the business and was not making any money, was not getting enough out of it, and Puhlman was to teach him how to perform this business of putting the compound on the sails.

Q. You misunderstood my question. A. No, I
20 have not misunderstood your question. You asked me what inquiry I made and what I got, and Mr. Puhlman told me these things.

Q. About these two stubs that have certificates missing? A. Yes.

Q. Were they missing then at the time—

The Court: Let the witness continue his answer.

A. Continuing my answer to the prior question,
30 I was also informed by Mr. Puhlman that Mr. Lynton S. McNeal had agreed to pay him \$1500 in addition to the \$500 for his secret process of mildewing sails, that the business ran out—

Mr. Bachman: I move to strike out that
40 answer as not responsive. I have asked for conversation with regard to stub, and I do not intend willingly to consent to a lot of irrelevant material going in the record to bind me.

William P. Martin—Cross

The Court: You asked first what inquiry was made as to why these certificates happened to be in the book in the form they were, and also what conversation there was between Mr. Puhlman and Judge Martin; now that widens the latitude.

A. (Continuing.) And Lynton S. McNeal had come to him one day and given him his stock endorsed in blank and told him that he was through, or words substantially to that effect, and that Mr. McNeal no longer took any interest, Lynton S. McNeal no longer took any interest in the company; subsequently he said that his wife had died, that Wollney was the brother of his wife, and that one day he, Puhlman, had gone over to Mr. Frank W. McNeal's office in New York, and that at Frank W. McNeal's office in New York a certificate was made out for fifty shares to Frank McNeal, and that he, Puhlman, signed it as president and Frank McNeal signed it as treasurer, and I asked him why he had done that, and he said "Well, I know I did wrong, I didn't like to," and he said "We have never acted on it;" and I said "That is your explanation of that situation?" and he said "Yes," and subsequently what he said to me was put into the form of an affidavit which was made up sometime in September, 1912, and he said that that certificate was missing from the book, had been issued to Frank W. McNeal, and that there was no stub for it in the book for that reason.

Q. Then you knew, did you, before the meeting of March 6, 1913, that a certificate was outstanding in the name of Frank W. McNeal in the Neptune Mildew & Water Proofing Company, did

William P. Martin—Cross

you? A. I knew that the superintendent and general manager, whatever he was, of that company had so stated to me as his counsel, and as counsel of the company; I don't know it, it was hearsay to me.

10 Q. Did you make any effort to inquire of Frank W. McNeal in regard to the truth of the facts with respect to the stock certificate? A. No, sir.

Q. Did you make any inquiry as to who was president of the Mildew Company after Mrs. Puhlman's death? A. I made an inquiry, yes, I made an inquiry; do you want me to tell you what it was?

Q. You made inquiry. Did you find out that he was president? A. I found out there was no president after Mrs. Puhlman's death.

20 Q. Was it Puhlman that told you there was none? A. He told me the facts and I drew that conclusion; he said Mrs. Puhlman was president; I had seen it in the minute book; Puhlman told me she had died, and he told me of what had taken place at a stockholders meeting at Mr. Frank McNeal's office in New York, and my conclusion was that from the time Mrs. Puhlman died until 1913 there was no president of the company.

30 Q. When a meeting of the stockholders of the Neptune Company, assuming your point of view only for the purpose of the question, was held in March, 1913, did Mr. Rudolph Puhlman present any certificates of stock in his own name? A. Well, in the first place, I haven't got any view that I have expressed, and, in the second place, I was not at any such meeting.

40 Q. Wasn't Mr. Puhlman the one that claimed to be president of the Neptune Company in a deed

William P. Martin—Cross

executed in the name of that company to the Central Railroad of New Jersey? A. He was, yes.

Q. And didn't he sign this deed in your presence? A. He did.

Q. Did you make any inquiry as to whether he had been qualified to hold the position of president by reason of the fact that he was stockholder? A. What do you mean, some specific inquiry of Mr. Puhlman at that particular time? 10

Q. Of any of the circumstances that would lead you to be convinced when he presented himself to you as Rudolph Puhlman as president of the Neptune Mildew & Water Proofing Company he was authorized to act as such by being a stockholder? A. Yes, I made an inquiry.

Q. Did you find that he was the owner of stock? A. I had before me or had already examined this book that Mr. Hood has produced here, and which is called the minute book of the Neptune Mildew & Water Proofing Company, and I had seen in that that Mr. Puhlman was elected by the board of directors the president of the company, and Mr. Puhlman when he signed the deed stated to me that it was the deed of the company and that he signed it as president. 20

Q. Did you try to find out whether he was a stockholder at all in his own name? A. Mr. Puhlman's stock, as I remember it, from the inquiry which I made, was the one share of stock which John Wollney had had in his possession and in his name originally and which was assigned to Rudolph Puhlman. 30

Q. Do you state that on just simple assumption or do you really know? A. I don't know it. You asked me, sir, if I have understood your ques- 40

William P. Martin—Cross

tion correctly, if I made an inquiry and if I so understood, and what I understood about where Puhlman got his stock, and that was my understanding of it.

10 Q. You took no measures, however, to satisfy yourself he was a lawful stockholder at the time he appeared before you and executed deed to the Central Railroad Company of New Jersey, Exhibit C-3? A. Yes, I read the minutes, I had read them, I had read them before.

Q. Did you look at the stock certificate book itself to see if he was a stockholder? A. No.

20 Q. Didn't you assume, because he was holder of assigned stock—A. No, I cannot bring a mental picture to my mind now of having looked at it; I may have done so.

Q. You did not know for a fact that he was holder of any stock in his own name, did you, except from the fact you saw it in these minutes?

Mr. Hood: I object.

The Court: I will permit it.

A. No; I only saw stock issued in his name, and I saw the minute book and I saw a number of other things that were there at that time, and I knew that Mr. Puhlman had bought his stock.

30 Q. Did you see the stock issued in his name? A. You mean did I see a certificate of stock for one share to Rudolph Puhlman?

Q. Yes. A. I think so.

Q. Where is the stock certificate book that you claim to have now? A. I don't claim to have any now. Are you speaking of Mr. Puhlman individually or as executor?

40 Q. Individually? A. I have answered you with reference to his holding individually.

William P. Martin—Cross

Q. There were two other directors of that company, were there not? A. Yes, so far as I know, or the minutes show.

Q. Who were they? A. Mr. Carl L. Brown and Mr. Maxwell Wagner.

Q. What stock do they hold? A. Do you want me to state what I know about it? 10

Q. Just answer the question. You are a judge and know directly what I am driving at. A. I am a Judge, and that is the reason I cannot answer your question of mixed law and fact.

The Court: This question of counsel may be stricken out of the record.

Q. Were these two men in your employ at the time? A. No.

Q. Were they what you call dummy stockholders? A. They had no practical interest of an individual character so far as I know. 20

Q. They didn't own their stock, did they? A. Yes.

Mr. Hood: I object.

The Court: I overrule that.

Q. I mean they hadn't paid anything for their stock, had they? Did you know at the time the deed to the Central Railroad of New Jersey was executed that Maxwell Wagner was holder of ninety-nine shares of stock as he alleges? A. I believe he was. 30

Q. And how did he acquire that? A. I believe he acquired it by means of an assignment of one hundred shares from Lynton S. McNeal to him, one of which shares he had in turn assigned to Carl L. Brown.

Q. You heard Wagner say he had not paid anything for that stock? A. Here in the court room? 40

William P. Martin—Cross

Q. You heard Mr. Brown say he hadn't paid anything for the stock?

The Court: I will strike both of those questions out.

10 Q. You recall the assignment, socalled, by L. S. McNeal that was sent to him up at New Bedford, Massachusetts and there executed by him, and can you state whether this paper I show you, Exhibit C 8, as far as the type-writing goes is a copy of that assignment? A. I think so.

20 Q. There was no writing in it at that time, was there? A. The assignment, as I remember it, came to me from Mr. John Milton, and the name of the assignee was not written in, as I remember it, and it was in typewriting, and I think the word "hundred" was in it; it was given to Mr. Puhlman and he took it away, and when it came back to me I do not now remember whether the name Maxwell P. Wagner was in it, it may have been blank; the word "hundred" was written in it at that time when Mr. Puhlman brought it back; I think the word after the word "hundred" in typewriting was the word "shares," and I think this letter "S" in red ink in the exhibit which you show me is not a *fac simile* of that assignment because I think the typewritten word there
30 originally was "shares," the date March 1st, 1913, I think, and whether before or after Lynton McNeal's signature appeared on the paper I don't know. The name A. S. Small was on the paper when Puhlman brought it back, and the name L. S. McNeal was on the paper when it was brought back.

40 Q. Did you make any inquiry with regard to the interlineation of the word "hundred" in this

William P. Martin—Cross

assignment? A. I did not. You mean what, at the time Puhlman brought it back?

Q. The first time? A. No.

Q. You are aware of course, as a lawyer, that the interlineation of a word like "hundred" in an assignment which on its face calls for but one share is usually initialed by the party who executed the paper, are you not, for the purpose of making it binding? A. Not necessarily. 10

Q. Then you say, as an attorney, that an assignment of one share which contains an interlineation between the "one" and "shares" reading "hundred" needs no further execution on the part of anybody for the purpose of making it binding? A. I don't think so.

Q. This certificate that you saw in the stub book in the name of Lynton S. McNeal had the usual form of transfer on the back of it, had it not? A. By that you mean the ordinary endorsement of a stock certificate for the purpose of transferring it? 20

Q. Yes. A. That is my recollection of it, yes.

Q. Now did you examine the stock book to see whether or not there was any stock issued in place of this stock of Lynton S. McNeal? A. I examined the stock book and I found nothing else after the Lynton S. McNeal stock so far as I remember now. 30

Q. Didn't you testify in the mandamus proceeding that you did not remember but that you did not think there were any other stubs indicating issuance of stock at all, but that there may have been some stubs blank of a certificate out?

A. Yes, I think so.

Mr. Hood: Is not that what he says now? 40

William P. Martin—Cross

Mr. Bachman: He says he thinks so.

The Court: That is both his testimony and Mr. Brown's testimony.

10 A. The only question in my mind is whether it has been correctly transcribed and printed, that is all. That is my general recollection of it.

Q. Were you asked this question and did you give this answer in the mandamus proceedings, referring to the so-called assignment: "Is that the paper to which you referred when you said you understood somebody else was stockholder of the company?" "A. This assignment of Wagner of one hundred shares, and I think out of the one hundred shares—"

20 Mr. Hood: I object. I don't think the testimony can be introduced on this trial except by way of contradiction as to what he said on the former trial. If there are any facts of issuance he desires to prove they can be elicited by direct questions.

The Court: I will sustain the objection.

30 Q. Did you have any doubts at the time the deed was given in the name of the Neptune Company to the Central Railroad Company of New Jersey that Mr. Brown was stockholder in the Neptune Company? A. No.

Q. Were you asked this question in the mandamus proceeding and did you make this answer "Was that the paper to which you referred when you said you understood somebody else was a stockholder of the company? A. This assignment and I think there was a subsequent assignment out of the hundred shares to Brown Q. And it is through this instrument you have before you? A. 40 Well I stated what the instruments are; I do not

John Milton—Direct

determine the legal question; it is through that instrument Brown is a stockholder if he is at all”
If he is at all? A. Certainly.”

Q. Did you make that statement? A. Yes; I beg-pardon; I was expecting you to proceed with further questions.

10

JOHN MILTON, sworn:

Direct-examination by Mr. Hood:

Q. May we assume that you are corporation counsel of Jersey City and practicing there? A. Yes.

Q. I want to ask you whether you ever had anything to do with the Neptune Mildew & Water Proofing Company? A. I did.

20

Q. And can you tell me about when it was? A. I should think in the early part of 1912 or 1913, I am not sure of the year, it was about February or March.

Q. In connection with the work that you did for them did you have drawn in your office a certificate to be signed by Mr. Lynton S. McNeal for the assignment of stock? A. Yes.

30

Q. It now appears that in the certificate there was written the word “one” and that afterwards there was inserted the word “hundred” after “one” or before “shares;” can you tell us how that happened? A. I can’t tell you exactly how it happened; I know this, at that time my recollection is I was drawing a series of papers which were intended to revive or revivify this company, and I think I dictated a complete set of minutes and resolutions and bylaws and transfers of stock as a series of forms; they were to be sent to Judge Martin, my recollection goes, and that

40

John Milton—Cross

Mr. Puhlman came over from Martin's office, and I think he was to go up some where in Massachusetts, this Mr. McNeal was on a government survey of some kind, or on a boat off Cape Cod, I think, some where up that way and the stenographer brought this series of documents in, and I
 10 examined them, and I think Puhlman was waiting and running over them, I think this assignment was for one share, and my recollection is that Lynton McNeal held a hundred shares, and I said "now, change that form to one hundred," and I assume the document had been rewritten, and Puhlman sat in the outside office when the papers were handed in by the stenographer, and the next time I saw the paper it had the one hundred written in.

20

Q. In ink? A. Yes, sir.

Q. Then it was signed? A. No, sir.

CROSS-EXAMINATION by Mr. Bachman:

Q. Then you did not see the word "hundred" written in at all, did you? A. Oh, no.

30

Q. And when it came back whose handwriting was it in, if you know? A. I can't tell you that; my present recollection is that the handwriting was familiar to me, and it may have been done in my office; this thing has kind of freshened my recollection; I was annoyed about it, but felt satisfied the thing was all right, let it go.

Q. When it left your hands it only called for one share, did it? A. Yes, and I turned it over to somebody in my office and said it ought to be corrected.

40

Q. And as far as you know it was executed by

Gregory B. Littell—Direct

L. S. McNeal as owner for one share only?

Objected to.

The Court: I overrule the question.

Q. How did you come to learn that Lynton S. McNeal was a stockholder, any way?

Mr. Hood: I do not see that that is cross-examination. 10

The Court: I will permit it.

A. I think the information came to me from Judge Martin.

Q. Did you ever see the stock certificate book?

A. No, sir.

By Mr. Hood: Q. Were the words Maxwell T. Wagner on this document? A. I haven't any recollection of it, I haven't any recollection at all.

Q. When it came back to you was it just executed exactly as I have got it here in form? A. I should think so; yes, sir. 20

Q. Did it come to you from Judge Martin in this form? A. I think it was brought back to me that way.

Q. Did you notice whether the handwritings were different? A. I wouldn't want to swear to that, I really couldn't say.

30

GREGORY B. LITTELL, sworn:

Direct-examination by Mr. Hood:

Q. You are in the employ of the Central Railroad Company of New Jersey? A. Yes, sir.

Q. And how long have you been in the employ of the company? A. Since July, 1903. 40

Gregory B. Littell—Direct

Q. In what department are you employed? A. Real estate and tax department.

Q. Did you know a man by the name of Doughty in the employ of the railroad company? A. Yes.

10 Q. What department was he employed in? A. At the head of the real estate department.

Q. In the same department you were? A. Yes.

Q. Were you ever under him? A. Yes.

Q. Do you know whether Mr. Doughty is living or dead? A. He is dead.

Q. When did he die? A. September 24, 1914.

Q. Do you know the location of the lots which the Central Railroad Company got from the Neptune Mildew and Waterproofing Company? A. Yes, I know about where they are.

20 Q. Have you with you a diagram showing their location? A. Yes.

Q. Will you produce it, please. The little square that is marked here represents the lots in controversy, 75x130, is that it? A. Yes.

Q. What are these things on the paper? A. Present round house.

Q. When was that built? A. Why, it was finally completed in 1915.

30 Q. When was the structure begun? A. I want to change that; it was October, 1915, it was completed, and it was begun in December, 1912.

Q. It seems to be in two parts? A. That is the usual form.

Q. Do you know which end of it was built first, which side of it, that on what you would call the east end? A. They might begin anywhere; that all depends on the engineering.

40 Q. I want to know as a matter of fact whether

Max Wagner—Direct

you can tell me from your memory which of these two went up first? A. Why, on the south side.

Q. Was the construction of the building on the north side delayed until the south building was constructed, or did they go up together? A. I can't say as to that.

10

Q. You don't know about that? A. No.

Mr. Hood: I would like to offer this diagram just for the purpose of showing the general location.

CROSS-EXAMINATION by Mr. Bachman:

Q. Isn't it a fact that the Central Railroad Company commenced to do or did something with the lots owned by the Neptune Company before they ever got the deed? A. I can't say just that. 20

By the Court: Q. As a matter of fact the Neptune Company lots are about in the middle of the round house? A. Yes, one side of the round house.

Q. What are those (indicating)? A. Those are the leaders into the round house.

Q. What are these things here? A. That is the turn table.

30

Q. Isn't Mr. Holmes the general manager of the company? A. No.

Q. What position does he occupy? A. He is assistant general counsel.

Q. He takes the place of the general counsel in his absence, does he? A. Yes.

MAX WAGNER, re-called:

Direct-examination by Mr. Hood:

Q. I show you a book here and ask you whether

40

Frank McNeal—Direct

that is the stock book of the Neptune Mildew Waterproofing Company?

Mr. Bachman: That is objected to in form.

Objection overruled.

10 A. Yes, that is the stock book of the Neptune Mildew and Waterproofing Company.

Offered in evidence.

Objected to as not binding on the complainant, representing as it is claimed to be the acts of usurping board of directors, and therefore not within the issues, and incompetent as well.

The Court: Let it be marked.

Stock book marked Exhibit D-8.

20 Blueprint map offered and marked Exhibit D-9.

(By stipulation the blue print is not printed but can if desired, be handed up on the argument.)

FRANK McNEAL, re-called:

30 Direct-examination by Mr. Hood:

Q. Were you in the ink business at one time?

A. Yes.

Q. When? A. At what time do you refer to? I have been in the business for many years.

Q. How long a period of time? A. I began it in 1897 or 1898.

Q. And you are still in it? A. Yes.

40

Exhibit C-1

GREGORY B. LITTELL, re-called:

Examined by the Court:

Q. Is this round house on the main line of the Central? A. It is just off the railroad.

Q. Engines are used there in connection with the main line service? A. Yes, and branch lines. 10

Testimony closed.

Exhibit C-1

CERTIFICATE OF INCORPORATION OF THE NEPTUNE
MILDEW AND WATERPROOFING Co.

20

THIS IS TO CERTIFY, That we Leopoldene Puhlman, Lynton S. McNeal and John Wollny do hereby associate ourselves into a Corporation of New Jersey, entitled "An Act concerning Corporations (Revision of 1896)," for the purposes hereinafter mentioned, and to that end we do by this, our Certificate, set forth:

FIRST. That the name which we have assumed to designate such Corporation, and to be used in its business and dealings, is 30

Neptune Mildew and Waterproofing Co.

SECOND. That the place in this state where the principal office is to be situated is the City of Jersey City in the County of Hudson and the place in this State where the business of the Corporation is to be conducted is the City of Jersey City and also the County of Hudson. The location of the principal office is at No. 34 Wilson St., Jersey 40

Exhibit C-1

City and the name of the agent in charge thereof upon whom process against the corporation may be served is Rudolph Puhlman.

10 The corporation is to have power also to conduct business in other States, and in foreign countries, to wit, in any portion of the United States and Europe, and to hold, purchase, mortgage and convey real and personal property in said States and Countries.

THIRD. The objects for which the Corporation is formed are to Manufacture and to use certain processes in Mildew and Waterproofing all kinds and weights of Canvas and other fabrics.

20 Manufacture, deal and sell various chemical compounds for use for steam machinery and other manufacturing purposes.

Manufacture and deal in all kinds of Merchandise.

FOURTH. The total amount of the capital stock of the Corporation is Two thousand (2000) dollars; the amount with which it will commence business is Two thousand (2000.00) dollars; the capital is divided into Two Hundred (200) shares of a par value of Ten (10.00) dollars each.

30 FIFTH. The names and residences of the incorporators, and the number of shares held by each, are as follows, to wit:

Leopoldene Puhlman 34 Wilson St., Jersey City,
N. J. Ninety-nine (99) Shares.

John Wollny 49 Lafayette St., Jersey City, N. J.
One (1) Share.

40 Lynton S. McNeal 487 Tenth St., Brooklyn, N. Y.
One hundred (100) Shares.

Exhibit C-1

SIXTH. The existence of the Corporation shall begin on the twenty fourth (24th) day of July, A. D. 1899 and shall continue for the period of Fifty years.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the twentieth (20th) day of July 10
A. D. eighteen hundred and ninety nine.

LEOPOLDENE PUHLMAN (L. S.)
JOHN WOLLNY (L. S.)
LYNTON S. McNEAL (L. S.)

Signed, Sealed and Delivered
in the Presence of
Frank W. McNeal
Rudolph Puhlman

Frank W. McNeal 20
Rudolph Puhlman

Frank W. McNeal
Rudolph Puhlman

(10¢ Inter. Rev. Stamp Can.)

STATE OF NEW JERSEY }
COUNTY OF HUDSON }

30

Be it remembered, that on this twentieth day of July, eighteen hundred and ninety-nine, before me The subscriber, a Commissioner of Deeds in and for said County, presonally appeared Leopolden Puhlman, John Wollny, Lynton S. McNeal who I am satisfied are the persons named in and who executed the foregoing Certificate, and I having first made known to them the contents there- 40

Exhibit C-1

of, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

C. HOWARD SLATER,
Commissioner of Deeds.

10 ENDORSED:

“RECEIVED in the Office of the Clerk of the County of Hudson on the 21st day of July, A. D. 1899 at 12 o'clock M., and recorded in Book of Clerks Record, for said County, page

John G. Fisher
Clerk.”

“FILED JUL 26, 1899

GEORGE WURTS
SECRETARY OF STATE.”

20

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, David S. Crater, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of the Certificate of Incorporation of NEPTUNE MILDEW AND WATER-PROOFING Co., and the endorsements thereon, as
30 the same is taken from and compared with the original filed in my office on the Twenty-sixth day of July, A. D. 1899, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Ninth day of March, A. D. 1914.

DAVID A CRATER,
Secretary of State.

40 (Seal)

Exhibit C-2

LEOPOLDINE PUHLMAN & HUS. TO NEPTUNE MILDEW AND WATER PROOFING Co.	}	DEED DATED JULY 20, 1899.	10
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THIS INDENTURE, made the twentieth day of July in the year of our Lord one thousand eight hundred and ninety nine.

Between Leopoldene Puhlman and Rudolph Puhlman her husband, of the City of Jersey City, in the County of Hudson and State of New Jersey, of the first part; and Neptune Mildew and Water Proofing Co., existing as a corporation under the laws of the State of New Jersey, of the City of Jersey City in the County of Hudson and State of New Jersey, of the second part.

Witnesseth: That the said party of the first part for and in consideration of the sum of Three thousand (3000.00) dollars lawful money of the United States of America, to her in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part and to *their heirs* and assigns forever.

Exhibit C-2

ALL those three (3) certain lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Jersey City in the County of Hudson and State of New Jersey and which on a map entitled "Map of desirable lots for sale being a portion of the Arbuckle Estate, Jersey City, N. J. filed in the office of the Register of said County of Hudson are designated and known as lots numbered fifteen (15) sixteen (16) and seventeen (17) on the northeasterly side of Oliver Avenue in Block number four hundred and eighty (480) and all of the said lots being twenty five (25) feet wide in front and rear and one hundred (100) feet deep on each side, subject however to a certain mortgage made by Isaac S. Gilbert and Maggie A. Gilbert his wife to Anna Pond, Guardian for William Pond for the sum of One thousand (1000.00) dollars dated April 11th, 1899 and recorded April 18th, 1899 in the Register's Office of the County of Hudson, State of New Jersey, in Liber (402) four hundred and two, page (568) five hundred and sixty eight.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining.

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part of, in and to the same and of, in and to every part and parcel thereof.

To have and to hold all and singular the above described land and premises with the appurtenances unto the said party of the second part....

Exhibit C-2

heirs and assigns to the only proper use, benefit and behoof of the said party of the second part...
heirs, and assigns forever.

And also that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid. 10

In Witness Whereof, the said party of the first part has hereunto set...hand and seal the day and year first above written.

LEOPOLDINE PUHLMAN (seal)

RUDOLPH PUHLMAN (seal)

Signed, sealed and delivered

in the presence of,

C. Howard Slater.

\$3.00 R. S.

20

State of New Jersey, }
 County of Hudson, } ss:

Be it remembered, that on this twentieth day of July in the year of our Lord one thousand eight hundred and ninety nine before me the subscriber a Commissioner of Deeds in and for said County, personally appeared Leopoldine Puhlman and Rudolph Puhlman her husband who, I am satisfied is the grantor mentioned in the within Indenture and to whom I first made known the contents thereof, and thereupon she acknowledged that *she* signed, sealed and delivered the same as *her* voluntary act and deed for the uses and purposes therein expressed. 30

Exhibit C-2

And the said Leopoldene Puhlman being by me privately examined separate and apart from her husband acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely, without any fear, threats or compulsion of her said husband.

10

C. HOWARD SLATER,
Commissioner of Deeds.

Rec'd. in the office & recr'd, July 21, 1899 @
11.50 A. M. 3124.

State of New Jersey, }
County of Hudson, } ss:

I. John J. McMahon, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my Office in Book 728 of Deeds on page 409 &c.

20

In Testimony Whereof, I have hereunto set my hand and seal this 4th day of March, A. D. 1914.

JOHN J. McMAHON,
Register.

By Charles M. Austin,
Deputy Register.

30 (Seal.)

Exhibit C-3

NEPTUNE MILDEW & WATER-
PROOFING Co.,
To
CENTRAL R. R. Co. OF N. J.

Deed dated
Apr. 2d, 1913.

10

This Indenture made the second 2nd day of April in the year of Our Lord one thousand nine hundred and thirteen.

Between Neptune Mildew & Waterproofing Company a Corporation of the State of New Jersey, having its principal office in the City of Jersey City, in the County of Hudson and State of New Jersey, of the first part.

And Central Railroad Company of New Jersey, a Corporation of the State of New Jersey, having its principle office, of the of in the County of and State of of the second part.

20

Witnesseth, that the said party of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, and other good and lawful considerations, to it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, being therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, unto the said party of the second part,

30

40

Exhibit C-3

and to and assigns, forever. ALL those three certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson, and State of New Jersey, and which on a map entitled, "Map of desirable lots for sale, being a portion of the Arbuckle Estate, Jersey City, New Jersey, filed in the office of the Register of said County of Hudson, are designated and known as lots numbered fifteen (15) sixteen (16) and seventeen (17), in block No. 480 and all of said lots being twenty-five (25) feet wide in front and rear and one hundred (100) feet deep on each side all of which lands front on the northeasterly side of Oliver Street in Jersey City.

Together with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances, to the same belonging, or in anywise appertaining.

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof.

To Have And To Hold, all and singular, the above described land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, and assigns forever.

And the said party of the first part, for itself and its successors, doth covenant, promise and agree, to and with the said party of the second part, its successors and assigns, that it hath not made, done, committed, executed or suffered any

Exhibit C-3

act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged or encumbered in any manner or way whatsoever.

10

In Witness Whereof, the said party of the first part hath caused these presents to be signed by its President and its common or corporate seal to be hereunto affixed the day and year first above written.

Attest: *Attest* by Maxwell Wagner,

Secretary.

NEPTUNE MILDEW AND WATER-
PROOFING COMPANY (Seal.)

By Rudolph Puhlman, President.

20

State of New Jersey, }
County of Hudson, } ss:

Be It Remembered, that on this second day of April, in the year of Our Lord, one thousand nine hundred and thirteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared, Maxwell Wagner, to me known, who being by me duly sworn according to law on his oath, saith that he is the Secretary of Neptune 30
Mildew and Waterproofing Company, the grantor in the foregoing deed mentioned, that the seal affixed to the said deed is the corporate seal of the said Company, that it so affixed by order of the said Company, that Rudolph Puhlman is the President of the said Company, that he saw the latter as such President sign the said deed and heard him declare that he signed, sealed and delivered the same as his voluntary act and deed, by its or- 40

Exhibit C-3

der, and that deponent signed his name thereto at the same time as an attesting witness.

MAXWELL WAGNER.

Sworn and subscribed to before me
the day and year above mentioned

10

Wm. P. Martins,

Master in Chancery of New Jersey.

Received in the office and recorded Apr. 4th,
1913, @ 10.37 A. M., No. 2539.

State of New York, }
County of New York, } ss:

20

I, John J. McMahon, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my Office in Book 1149 of Deeds on page 319 &c.

In Testimony Whereof, I have hereunto set my hand and seal this eighth day of January A. D., 1917.

JOHN J. McMAHON,

Register.

By Charles M. Austin,

Deputy Register.

30 (Seal)

Exhibit C-4*(Small book.)*

On cover: "Stock Book."

On first page: "Address & Stock Book.

Neptune Mildewproofing Company. 10
34 Wilson St. Jersey City, N. J.
Lynton S. McNeal, Secty & Treas."

Contents of pages 2, 3 and 4.

"To whom these presents may come, Greeting:
The location of the Principal Office of the Neptune Mildew & Waterproofing Company of the State of New Jersey is at #34 Wilson St. Jersey City N. J. The name of the Agent therein and in charge thereof and upon whom process against the corporation may be served is Rudolph Puhlman. The following is a list of the names and residences of the directors and officers of this company. 20

Name	Residence.
------	------------

The officers & shareholders of this company are
Leopoldine Puhlman, Pres.

36 Wilson St. Jersey City.
99 shares. 3.

John Wollny, 49 Lafayette St. Jersey City, N. J.	30
---	----

1 share #2.
Lynton S. McNeal, Sec. Treas.
487 Tenth St. Bklyn., N. Y.
100 shares.

Aug. 5th, 1899.

The foregoing statement is correct and true.

LYNTON S. McNEAL,
Secretary and Treasurer."

Written over foregoing in red ink is:

"Void L. S. McN. Sect."

Pages 5, 6 and 7 read: 40

Exhibit C-4

“To Whom These Presents May Come Greeting.

The location of the principal office of the Neptune Mildew and Waterproofing Company of the State of New Jersey is at #34 Wilson St., Jersey City. The name of the Agent upon whom process against the Corporation may be served is
 10 Rudolph Puhlman.

The following is a list of the officers and shareholders of said Company.

Name.

Residence.

Leopoldine Puhlman, Pres.

34 Wilson St. Jersey City.

Seventy four (74) Shares. Cert. #1 & 6.

Lynton S. McNeal, Sec. Treas.

20 487 Tenth St. Bklyn, N. Y.

One hundred (100) Shares Cert. #3 & 5.

John Lamont,

Maiden Lane, N. Y.

Twenty five (25) Shares, Cert. #7.

John Wollny,

49 Lafayette St. Jersey City, N. J.

One (1) Share, Cert. #2.

October 18th, 1899.

The foregoing statement is correct & true.

30 LYNTON S. McNEAL,

Secretary & Treasurer.

Cert. #4 Issued to Leo. Puhlman is made void.”

Page 8 reads:

40 “In consideration of the cancelling of the debt of Five hundred (500.00) Dollars I owe Frank W. McNeal, which he loaned me to purchase stock in the Neptune Mildew and Waterproofing Co. I have this day sold and delivered to him certificates #3 and #5 for 50 shares each of the said

Exhibit C-5

company, each certificate duly signed in blank on the back for transfer, this ends my connection with the Company.

LYNTON S. McNEAL.

Dec. 26, 1901."

10

Exhibit C-5

(Certificate of Stock.)

Incorporated under the Laws of New Jersey.

No. 8 Shares 50.

Neptune Mildew and Waterproofing Co.

Capital stock, \$2,000.00

20

This certifies that Frank W. McNeal is the owner of Fifty (50) shares of Ten Dollars each of the Capital Stock of Neptune Mildew and Waterproofing Co. transferable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 7th day of Jan. A. D., 1902.

30

FRANK W. McNEAL,
Treasurer.

RUDOLPH PUHLMAN,
President.

SHARES \$10.00 each.

40

Exhibit C-6

Seal, reading:

“Neptune Mildew and
Waterproofing Co.
Incorporated 1899, New Jersey.”
(in a circle.)

10 Certificate bears blank form of assignment and following endorsement:

“Certificate for 50 shares of the Capital Stock of the Neptune Mildew and Waterproofing Company. Issued to Frank W. McNeal. Dated Jan. 7th, 1902.”

Exhibit C-6

(Certificate of Stock.)

20 Incorporated under the Laws of New Jersey.

No. 9	Shares 50.
Neptune Mildew and Waterproofing Co.	
Capital stock, \$2,000.00	

This certifies that Frank W. McNeal is the owner of Fifty (50) shares of Ten Dollars each of the Capital Stock of Neptune Mildew and Waterproofing Co. transferable only on the books of the Corporation by the holder hereof in person or by
30 attorney upon surrender of this Certificate properly endorsed.

IN Witness Whereof the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 7th day of Jan. A. D., 1902.

FRANK W. McNEAL,
Treasurer.
RUDOLPH PUHLMAN,
President.

Exhibit C-7

SHARES \$10.00 each.

Seal, reading:

“Neptune Mildew and
Waterproofing Co.
Incorporated 1899, New Jersey.”
(In a circle.)

10

Certificate bears blank form of assignment and
following endorsement:

“Certificate for 50 shares of the Capital Stock
of the Neptune Mildew and Waterproofing Com-
pany. Issued to Frank W. McNeal. Dated Jan.
7th, 1902.

Exhibit C-7

20

Newark, N. J. April 2, 1913. No. A 18418

FIDELITY TRUST COMPANY 55-12

Pay to the order of

Neptune Mildew & Waterproofing Co. \$2995.42

Twenty-nine hundred and ninety five

42/100 Dollars.

P. C. DOWNING, Ass't Secretary.

Endorsed: Pay to the order of Roseville Trust Co. 30

Neptune Mildew and Waterproofing Company,

Maxwell Wagner,

Treasurer.

Pay to the order of Any Bank or Trust Co.

Apr. 4, 1913

Restrictive Endorsement Guaranteed

Roseville Trust Co., Newark, N. J.

Raymond E. Smith, Treas.

Perforated: PAID 4-5-13

40

Exhibit C-8

Frank W. McNeal,
Fifty Church Street, N. Y.
Phone, Cortland 2007.

April 3, 1913.

10 Francis Lafferty, Esq.,
Solicitor Fidelity Trust Co.
Newark, New Jersey,

Dear Sir:

20 Herewith I confirm my protest made to you orally this day, against the payment by you of the sum of \$2995.42 to Neptune Mildew & Waterproof Co. upon the ground that I am the Secretary and Treasurer of said Company and own 100 shares of the capital stock of said company (being one-half of the total issue), and never received any notice of any meeting of the said company where any business was to be considered regarding the transfer of company's real estate to the Central Rail Road of New Jersey. The alleged meeting of directors called for March 7, 1913, extract of minutes of which meeting you exhibited to me signed by one Maxwell Wagner is news to me, as I have never seen or heard of him before. As mater of fact on March 7, I was on the high seas
30 bound for Panama.

One half of the net proceeds of such sale belongs to me and I accordingly demand the same of your company.

Very truly yours,
FRANK W. McNEAL.

P. S. I have this day written to Judge Martin, Mr. Puhlman and Mr. Wagner to the above effect.

Exhibit C-9

Know all men by these presents, that the undersigned for good and valuable considerations received, has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto *Maxwell T. Wagner* 10 the right title and interest of the undersigned as a stockholder of the Neptune Mildew and Waterproofing Company, to the extent of one *hundred* shares of the capital stock thereof, and hereby request and direct the said Company to issue the certificate for said share to the aforesaid transferee or his nominee or assign.

L. S. McNEAL.

dated Mch. 1st, 1913.

In the presence of

A. S. Small

20

The words in italics are in writing; the balance in typewriting. The italicized words "hundred" and the letter "s" are interlined and place of insertion indicated with a caret.

Exhibit C-10

Frank W. McNeal,
Fifty Church Street,
Phone, Cortland 2007.

April 17th, 1913.

10 Dear Lyn:-

A few days ago Martin offered me \$1000 for my papers. Mr. Miller would not let me accept unless Martin paid the two notes then in process of collection, and so I wrote Martin; today I phoned his office, Wagner replied and said the Judge would not give over 1000.00 dollars. That settles it, Mr. Miller says "I will bring the rascal to terms with a conversion suit."

20 Now, Lyn, I want to know about that assignment. Martin tells me you did sign one for 100 shares to a Maxwell Wagner, this fellow is a clerk for Martin, but how and why in the world did you sign such a paper, you know you had no stock, and you had nothing to sell. Did you get any money for signing? Let me know all the facts, hope all are well and your ship will soon be in New York.

Your bro.
FRANK.

30

Exhibit C-11

Frank W. McNeal
 Fifty Church Street, N. Y.
 Phone, Cortland 2007.
 April 3rd, 1913.

The President,
 The Central Railroad of New Jersey
 Liberty Street, New York City.

10

Dear Sir:-

Please take notice I hereby confirm my verbal notice to your Company this a. m. by verbally notifying both Mr. Doughty and Mr. Holmes that the pretended purchase of the real estate of the Neptune Mildew and Waterproofing Co. through the Fidelity Trust Co. was a fraud, and the alleged "deed" was signed by men who are not either stockholders or officers. I have this day notified the Fidelity Company of the fraud and demanded that they stop payment of the check they sent this morning to Judge Martin of Newark. 20

I am the largest stockholder and I am the only legal Secy. and Treas. of the Company.

Yours truly,
 FRANK W. McNEAL.

30

Exhibit D-1*Waiver of Notice.*

10 We, the undersigned, stockholders of the Neptune Mildew and Water Proofing Company, a corporation under the laws of the State of New Jersey, hereby waive notice of the time, place and purpose of a special meeting of the corporation and fix the sixth day of March, 1913, at ten o'clock in the forenoon as the time, and the registered office of the company #34 Wilson Street, Jersey City as the place for said meeting.

20 And we hereby waive all the requirements of the statutes of New Jersey as to notice of said meeting and publication thereof and consent to the transaction of such business as may come before said meeting.

A. E. SMALL.

L. S. McNEAL.
CARL L. BROWN.
MAXWELL WAGNER.
RUDOLPH PUHLMAN.

Exhibit D-1½

30 FRANK W. McNEAL
Fifty Church Street, N. Y.
Phone, Cortland 2007.

April 3rd/13

Mr. Martin

Please forward the enclosed letters. I would send them direct but do not know the address.

I beg to call your attention to action taken by me relating to the check—one half of which belongs to me.

40

Yours truly
FRANK W. McNEAL.

Exhibit D-2

FRANK W. McNEAL
Fifty Church Street, N. Y.
Phone, Cortland 2007.

April 3rd/13 10

Mr. Maxwell Wagner

Dear Sir

I am the owner of 100 shares of the Neptune Mildew & Water Proofing Co.—just one half the capital stock.

I have stopped the payment of the check given the Company by the Fidelity Trust Co. for 2,995.42.

I am really curious to know just how you were elected Secretary—and on what you base statement made by you Mch 7th/13 as Secretary. 20

Yours truly,
FRANK W. McNEAL.

Exhibit D-3

FRANK W. McNEAL
Fifty Church Street, N. Y.
Phone, Cortland 2007.

30

April 3rd/13

Dear Puhlman

I have to day stopped payment on the check for 2,995.42 sent to the N. M. & W. P. Co. in payment for the property on Olive Street, Jersey City.

I own 100 shares of the Company and am Secretary and Treasurer. No notice of any stockholders meeting was sent me. 40

Exhibit D-4

10 Action to wind up the Corporation was begun by me on Aug. 22nd/10. You and your lawyer knew of that. Yet by an accident only I learn what you have illegally done. It will be interesting to hear Mr. Maxwell Wagner, the new "alleged" Secretary explain statement made in writing by him on Mch 7th/13. One half of this money must be paid to me.

Yours truly,
FRANK W. McNEAL.

Exhibit D-4

20

Judgment Roll.

SUPREME COURT.

NEW YORK COUNTY

	FRANK W. McNEAL,	} Plaintiff,	} Complaint
	vs.		
30	WILLIAM P. MARTIN,	} Defendant.	

The plaintiff herein, complaining of the defendant in the above entitled action, by Isaac N. Miller, his attorney, respectfully shows to this Court:

I. That at the times hereinafter mentioned, this plaintiff was and still is the owner and entitled to the immediate possession of the sum of One
40 thousand four hundred and ninety-seven $\frac{71}{100}$

Exhibit D-4

Dollars (\$1,497.71), as hereinafter set forth.

II. That shortly prior to the 17th day of April, 1913, this defendant had and received the said moneys to the use and benefit of this plaintiff.

III. That on the said 17th day of April, 1913, this plaintiff duly demanded payment of the said money, but the defendant refused and still refuses to deliver the same to plaintiff. 10

IV. That this defendant has converted the said moneys to his own use to the damage of this plaintiff in the sum of \$1,497.71.

WHEREFORE plaintiff demands judgment against the defendant for the said sum of \$1,497.71 damages, together with the costs and disbursements of this action.

ISAAC N. MILLER, 20
 Attorney for Plaintiff,
 Office and Post Office Address,
 50 Church Street, Manhattan Borough,
 New York City, N. Y.

State of New York, }
 County of New York, } ss:

Frank W. McNeal being duly sworn says that he is the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as those matter he believes it to be true. 30

FRANK W. McNEAL.

Sworn to before me this
 18th day of April, 1913.

Jas. Landy,
 Notary Public,
 New York County.

Exhibit D-4

NEW YORK SUPREME COURT.

NEW YORK COUNTY

10	FRANK W. MCNEAL, Plaintiff, against WILLIAM P. MARTIN, Defendant.	}	Answer
----	---	---	--------

WILLIAM P. MARTIN, the above-named defendant by his attorney HENRY MELLVILLE, answering the complaint in the above-entitled action, respectfully shows to the Court:

1. He denies each and every allegation in said complaint contained.

WHEREFORE, defendant demands judgment against the plaintiff, dismissing the complaint, together with the costs and disbursements of this action.

HENRY MELVILLE,
 Attorney for Defendant,
 Office and Post Office Address,
 45 Cedar Street, Manhattan,
 New York City, N. Y.

State of New York, }
 County of New York, } ss:

WILLIAM P. MARTIN being duly sworn, says that he is the defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowl-

Exhibit D-4

edge, except as to matters stated to be alleged on information and belief, and as to those matters he believes it to be true.

W. P. MARTIN.

Sworn to before me this

26th day of April, 1913,

Maxwell Wagner,

Notary Public, No. 168,

New York County,

Register's No. 4180.

10

SUPREME COURT.

NEW YORK COUNTY

20

FRANK W. MCNEAL,

Plaintiff,

against

WILLIAM P. MARTIN,

Defendant.

Judgment

The issues in this action having been duly brought on for trial before Mr. Justice Thomas F. Donnelly and a Jury at a Trial Term Part XVII of this Court, held on the 6th and 7th days of May 1914, at the County Court House in the City, County and State of New York, and the plaintiff and the defendant, respectively, duly appearing by counsel and the issues having been duly tried, and the Court having directed the Jury to render a sealed verdict, and the Jury having after due deliberation duly brought into Court and rendered such verdict on the 7th day of May, 1914,

30

40

Exhibit D-6

for the defendant, which has been duly recorded, and the costs of the said defendant having been duly taxed at the sum of \$108.06;

Now, on motion of Henry Melville, attorney for said defendant, it is

10 ADJUDGED, that the defendant William P. Martin have judgment against the plaintiff Frank W. McNeal upon the issues in this action, and that the defendant William P. Martin recover of the plaintiff Frank W. McNeal the sum of \$108.06, the costs as taxed, and that the defendant have execution therefor,

JUDGMENT this 11th day of May, 1914.

WM. F. SCHNEIDER,
Clerk.

20

Exhibit D-5

Deed of Neptune Mildew and Waterproofing Company to defendant.

Same as Exhibit C-3 printed *supra*.

30

Exhibit D-6

Copy of record in Chancery probating last will of Leopoldine Puhlman. By stipulation same is not printed.

Exhibit D-7

United States Engineer Department.
U. S. Dredge 'Navesink' New Bedford, Mass.
April 21, 1913.

Dear Frank:

About my assignment of 100 shares of Neptune Mildw Proofing Stock dated March 1st, 1913, to Maxwell Wagner- 10

I did not receive any money or promise of any in consideration; I signed this paper just to help Rudolph Puhlman settle his wife's estate as he stated to me he must have it for legal reasons, he knew and I also told Judge Martin I did not own anything in the Company as I had turned over my stock to you to whom it really belonged as you had originally put up the \$500.00 cash with which I purchased one-half ownership in the Company. 20

The reason I gave it to you was I could not make a living out of the business; what you did with it I do not know; when you quit the place I do not know, simply because I was disgusted with the Company and shop, and never wanted to see it again.

This is all I know of the matter. The ship will soon be in New York Harbor for repairs when I will call and see you.

Your brother,
L. S. McNEAL. 30

Exhibit D-8*Stock Book. Stubs.*

No. 1 for one share, Issued to Rudolph Puhlman. Dated March 6th, 1913.

From whom transferred: John Woolney.

No. 2 for 99 shares, Issued to Maxwell Wagner. Dated March 6, 1913.

From whom transferred: Lynton McNeal.

No. 3 for one share, Issued to Carl L. Brown, Dated March 6, 1913.

From whom transferred: Maxwell Wagner.

No. 4 for 99 shares, Issued to Rudolph Puhlman Executor Leopoldine Puhlman. Dated March 6, 1913.

20 No. 5 for one share, Issued to Julia Gilbert. Dated Nov. 10, 1914.

No. 6 for one share, Issued to John Puhlman. Dated Nov. 10, 1914.

No. 7 for 97 shares, Issued to Rudolph Puhlman, Executor. Dated Nov. 10, 1914.

Exhibit D-9

30 Blue print map. By stipulation the original exhibit can if desired be handed up on the argument.

New Jersey Court of Errors and Appeals

Between
NEPTUNE MILDEW AND WATER-
PROOFING COMPANY,
Complainant-Appellant,
and
CENTRAL RAILROAD COMPANY OF
NEW JERSEY,
Defendant-Respondent.

Appellant's Brief

This is an appeal from a decree in Chancery filed March 30th, 1917 (p. 5) in its entirety, made on the advice of Vice Chancellor Lane. The decree dismisses the bill and allows costs and \$100 counsel fee.

Statement

Complainant was organized under the General Corporation Law of 1896 (paragraph numbered one, p. 6) admitted in the answer (p. 12). The certificate of incorporation (p. 123) shows this to have been in 1899, with a capital stock of 200 shares of \$10 each, total, \$2,000.

In 1913 it was the owner of certain property

located in Jersey City, described in 17th paragraph of page 10 and in the deed exhibits Puhlman to Neptune, p. 127, and Neptune to Central Railroad, p. 131. This was the sole property of complainant (p. 7-40). In March, 1913, a so-called meeting of stockholders and directors was held (pp. 8-14) at which an offer was received from defendant railroad company for the property and the offer was accepted (p. 14). In the early part of April, 1913, a deed was executed by the officers elected by the so-called directors and delivered to defendant (pp. 10-13) and a check for \$2995.42 of the Fidelity Trust Company of Newark on itself (p. 139) was handed to the representative of the so-called officers, drawn to the order of complainant. This check was dated April 2, 1913, deposited in the Roseville Trust Company April 4, 1913 (pp. 92-40), and was not paid by the Fidelity Trust Company until April 5, 1913 (p. 139, bottom of page). The interval between date of check, date of deposit and date of payment is very important.

On April 3, 1913, Frank W. McNeal, who was and is Secretary and Treasurer of complainant since 1902, a director thereof and the holder of one-half of its capital stock, certificates for which appear on pages 137-139 of Case, found out for the first time (p. 46-30) that persons claiming to be officers of complainant had sold the company's property and he called upon Francis Lafferty, Solicitor of the Fidelity Trust Company (p. 47), telling him of the facts, corroboration of which appears in his letter to Mr. Lafferty on page 140 of the Case. Under the same date he wrote a letter to Judge William P. Martin (p. 144) which contained letters to Maxwell Wagner, the alleged Treasurer (p. 145) and Mr. Puhlman. The latter

(p. 145) shows that said McNeal claimed he had *stopped payment* of the check of Fidelity Trust Co.

On the same April 3, 1913, McNeal called upon the counsel of defendant Railroad Company (pp. 46-7; Exhibit C-11, p. 143) carrying with him his two certificates of stock, and stating to them that he had received no notice of the transaction, although he was owner of half of the entire capital stock. This is corroborated in his letter to defendant of same date (p. 143) wherein it again appears (line 21) that he claimed to have *stopped payment* of the check of the Fidelity Trust Company. Payment could have been stopped, however, as the check was not deposited until April 4, 1913, and not paid by the Fidelity Trust Company until April 5, 1913 (p. 139-40).

Under a contention that the alleged stockholders and directors were usurpers and had no right to make the conveyance to defendant, this action has been commenced to set aside the deed and for an accounting of rental (p. 11).

* The laches which defendant rather lightly urges (p. 18) does not eventuate, because McNeal tried to force complainant to recognize his stock in a mandamus proceeding in our Supreme Court, where testimony was taken (p. 61); but on March 16, 1916, his stock was recognized by the corporation (p. 67) and this suit results.

For the purpose of this appeal we may discuss the facts almost as given out of the mouths of defendants' witnesses.

Strangely enough the assignment upon which the proceedings leading to deed to defendant is not produced in Court and we reproduce it here as nearly in form as it can be done, the printing being typewriting (p. 141):

" Know all men by these presents, that the under-
signed for good and valuable considerations re-
ceived, has sold, assigned, transferred and set
over, and by these presents does sell, assign,
transfer and set over unto *Maxwell J. Wagner*

the right, title and interest of the undersigned
as a stockholder of the Neptune Mildew and Wat-
erproofing Company to the extent of ^{*hundred*} one share
of the capital stock thereof, and hereby request
and direct the said Company to issue the certifi-
cate for said share to the aforesaid transferee or
his nominee or assign.

dated Nov 1st 1913

In the presence of

A. Small

L. S. McNeal

"

No similarity between signatures of L. S. Mc-
Neal and any of the interlineations (Wagner,
p. 95-10).

When assignment was shown Wagner he did
not ask any questions about the interlineations,
especially the "hundred" between "one" and
"share" (Wagner, p. 98-30).

Wagner did not ask Mr. Milton (who, he said,
prepared the assignment) why that word "hun-
dred" was inserted between "one" and "share."
(Wagner, p. 98-40).

Lynton McNeal saw the original assignment in the mandamus proceeding (Lynton McNeal as defendant's witness, p. 100-40).

He had signed it when it called for but one share (Lynton as defendant's witness, p. 100-20).

Lynton had mentioned 100 shares in his letter of April 21, 1913 (Exhibit D-7, p. 151) because his brother had written to him stating that L. S. McNeal had assigned his brother's 100 shares (Lynton as defendant's witness, p. 101-20).

Frank W. McNeal's letter of April 17, 1913, (Exhibit C-10, p. 142) shows that Lynton's statement was correct.

Frank W. McNeal had first ascertained that his brother had assigned 100 shares on the morning of April 3, 1913, when "Judge Martin told me that my brother had assigned one hundred shares of stock" (F. W. McNeal, 101-20).

Frank W. McNeal said that on April 5, in his office, Judge Martin produced a paper like this; he says "There you recognize, is that your brother's signature;" I said "yes;" "Well," he says, "there is a copy of his assignment for one hundred shares;" so I assumed the original was for one hundred shares" (F. W. McNeal, p. 101-30).

Witness Martin made no inquiry about the interlineation of the word "hundred" (Martin, 114-40, 115-10).

Lynton S. McNeal's stock

It bore assignment on back for the purpose of transferring (Brown, p. 78-10, Martin, 105-30, 115-30, L. S. McNeal, 137-10).

Two certificates of stock were pasted in the stock book about one inch under the face of the stub (Brown, 83-10).

Book with certificates was brought to Judge

Martin two years before Equitable fire of January, 1912 (p 102- Martin, 103-30).

“This had been knocking about in the office for a very long time and nothing done” (Martin p. 107-20).

Brown kept the books in a shelf just to the left of his desk where they were a couple of weeks (Brown, p. 76-20; Martin, p. 107-30).

“When I received it from Puhlman my recollection is that it was in the book loose. I may have attached it by pasting it or pinning it in. I don't know” (Martin, p. 105-40).

Meeting which authorized sale

Wagner's stock, 99 shares, for which he paid nothing and Brown's one share of stock, for which he had paid nothing, and the Puhlman stock were what authorized the sale March 6, 1913 (Wagner, p. 96-30).

Wagner, Brown and Puhlman were the directors who carried out the instructions they had as stockholders given themselves with reference to the acceptance of the offer and executing deed to defendant (Wagner, p. 97-10).

Brown was simply a dummy director (Brown, p. 81-30).

“Q. If you paid nothing for the stock, to whom did you feel as if you were accountable for the stock as a present holder of it?
A. To Mr. Puhlman” (Wagner, p. 95-20).

This stock is still in Wagner's name (Exhibit D-8, p. 152).

The learned Vice Chancellor thought complainant ought to have had Mr. Puhlman as a witness (Conclusions, p. 22-30).

Stock book with Lynton McNeal's former certificates in it, on a shelf near Brown's desk, a few days before the fire (January 1912) (Martin, p. 107-30).

L. S. McNeal summoned to Judge Martin's office for the purpose of discussing Mrs. Puhlman's will (McNeal, pp. 35-36; Wagner, p. 97-30).

Mr. Puhlman had related the whole transaction to Judge Martin and Judge Martin says:

“Now I want this confirmed, you tell me all about Lynton McNeal, you get him down here.”

And they got him down there on that day and he wrote for him and he came down there and dictated a statement to him about the will, how the will was made up and what he remembered about it (Wagner, p. 97-30).

F. W. McNeal produced certificates of stock for 50 shares each (Exhibits C-5, C-6, pp. 137-138), signed by Rudolph Puhlman as President and McNeal as secretary and treasurer (p. 45-40). These certificates conformed to those in the stock book (p. 81-10, p. 107-40). The seal also conformed to the one that Brown saw before it was destroyed (p. 81-10).

The certificates 3 and 5 were assigned by Lynton S. McNeal December 26, 1901 (Exhibit C-4, pp. 136-7, a book the writings in which were made by him at the times they were dated, p. 28-40).

The stock to Frank W. McNeal was revealed to witness, Martin, by Puhlman (p. 109-20), who told him that he had signed it as President (p. 109-30).

Witness Martin made no effort to inquire of Frank W. McNeal as to the truth of the facts with

respect to the stock certificates (p. 110-10) although there were according to defendant's own witnesses blank stubs in the stock book (Brown, p. 77-20; Martin, p. 105-20).

“Q. You are aware, of course, as a lawyer that the interlineation of a word like ‘hundred’ in an assignment which on its face calls for but one share is usually initialed by the party who executed the paper, are you not, for the purpose of making it binding? A. Not necessarily.

“Q. Then you say, as an attorney, that an assignment of one share which contains an interlineation between the ‘one’ and ‘shares’ reading ‘hundred’ needs no further execution on the part of anybody for the purpose of making it binding? A. I don’t think so” (Martin, p. 115-20).

Notice to defendant putting it on inquiry

F. W. McNeal immediately called on defendant (April 3, 1913) and told Mr. Doughty and Mr. Holmes that he had received no notice, although he was owner of one-half of the stock, showed them his certificates (pp. 46-7-20), who referred him to Fidelity Trust Company, Newark; McNeal called on Mr. Belden and Mr. Lafferty of that Co. showed his papers and told his story (p. 47-30); wrote to defendant and to Mr. Lafferty as Solicitor of Fidelity Trust Co. confirming (pp. 140-143). Letters dated April 3, 1913, and check (Exhibit C-7, p. 139) paid April 5, 1913.

Mr. Holmes is assistant general counsel of defendant (p. 121-40).

The learned Vice Chancellor's conclusions (p. 20 *et seq*) are, we regret to say, in error as to the facts. The unfortunate loss of the report of the conclusions at end of the trial may account for this in part, but as we shall point out these errors are fundamental and form ground for attacking the decree.

Complainant's contention is that its name, but without the proceedings of its lawful stockholders, was improperly used to transfer its real property to defendant; that this was done by attempting to resurrect old stock in name of Lynton S. McNeal found pasted to the stubs in the stock book *already endorsed in blank*, through the medium of a paper which bears the earmarks of a very questionable document, without any regard whatever for the stock in name of Frank W. McNeal, the existence of which was known to witness Martin through information given by Puhlman (p. 109-30) but as to which no inquiry whatever was made of Frank W. McNeal himself (p. 110-10)

This action is not brought by Frank W. McNeal as an alleged or otherwise stockholder, but by complainant itself. There is no theory compatible with the stockholder idea except the allegation of defendant's answer (p. 15, characterizing him as "the only aggrieved person").

The learned Vice Chancellor's belief that the 100 shares of Lynton S. McNeal ~~were assigned knowingly in such amount is predicated upon a letter of Lynton S. McNeal~~ were assigned knowingly in such amount is predicated upon a letter of Lynton S. McNeal (p. 151), because he uses the words:

"By my assignment of one hundred shares of Neptune Mildew and Waterproofing company, dated March 1st, 1913"

Whereas said letter was in answer to one from Frank W. McNeal (p. 142), admitted (p. 72) with statement as to D-7 being in answer. Both letters read together do not permit such a conclusion as that given by the learned Vice Chancellor; and whether he believes the testimony of Lynton S. McNeal, defendant cannot be heard to take a position at odds with their own witness (*i. e.* the letter D-7, p. 151), which letter is in evidence for all purposes and, being offered by defendant, it is concluded by its very pointed statements as the basis for making an assignment of stock. We shall discuss this further elsewhere.

“Such transfer of interest from Lynton S. McNeal to his brother, Frank W. McNeal, was never acted upon and that the legal title to the stock remained in Lynton S. McNeal” (p. 22).

We know of no rule of law which justifies this finding and the record shows no facts upon which defendant can rely to base it upon. We must remember that this is an action in which Lynton S. McNeal has no interest. Defendant has not been *d*eceived by Lynton S. McNeal or his brother, Frank. Defendant wilfully went ahead after receiving notice (p. 47) that Frank claimed to be owner and holder of one-half of complainant's stock and had not been notified of any meetings to consider sale of property to defendant, all in ample time to stop payment through its agent, the Fidelity Trust Co. of the latter's check for the title money. It is not the business of a Court of Equity to bestir itself to find unprecedented means to protect such a defendant, and it is certainly unprecedented to set up as a rule of law that legal title remained in an assignor of stock

who swears that it is not his and has not been his for over fifteen years, particularly when such assignor is asking no relief against anyone and it is all done on the basis of a document which requires no particular acumen to question it—an assignment which by interlienation in a handwriting different from that of the assignor (p. 95), purports to raise it from one to one hundred.

“The testimony of Lynton S. McNeal in this proceeding is inconsistent with his testimony in prior proceedings in the Supreme Court, on mandamus.”

The conclusions state (p. 22). This is error. Lynton S. McNeal was asked if he had testified as quoted (p. 34) in the mandamus proceeding and as he answered “no” and nothing has established the contrary in the record, the finding is entirely unwarranted. Considering the fact that complainant’s counsel in open Court (p. 61) tendered his adversary the record in the mandamus suit and nothing more is heard of it in the case, this error of the Court is very fundamental.

“If the complainant sought to rely upon the validity of the two alleged certificates of stock produced by Frank W. McNeal he should have produced Puhlman as witness,” the conclusions state (p. 22, line 21). The entire case shows that Mr. Puhlman was the one who assumed to direct the misuse of the stock, and it seems quite absurd that complainant would risk guaranteeing the credibility of such a person in any event. Failure to produce reflects upon a party only when it is shown that such a witness is under the control of such party only and the record does not show it. Furthermore it was not even claimed by defendant that such was the case.

The allusion to the right of defendant to condemn (p. 23) has no part in this case. It has been held that the right of condemnation does not enable the holder of it to assume any right of trespass and escape by such a plea.

The learned Vice Chancellor mentions the waiver of notice of meeting of stockholders, signed by Lynton S. McNeal (p. 21-30). This was signed in New Bedford (p. 33-40) and there was no ink writing when he signed it; it was blank (p. 42-20). The signatures afterward added (p. 144-20) do not involve Lynton McNeal. The signing of this as well as the assignment of stock are wholly consistent with Lynton's statement that it was to aid Puhlman in probating his wife's will (pp. 35-6) as he, Lynton, had written her will.

Appellant assigns as error, the findings of the learned Vice Chancellor, and

1. The decree of dismissal is against the weight of evidence.
2. There is no element of estoppel involving complainant in the transaction.
3. The finding that defendant as a public corporation with right to condemn for railroad purposes is entitled to more consideration is erroneous.
4. Defendant was placed upon notice which put it on inquiry to ascertain the true facts.
5. The Court committed reversible error in receiving and in rejecting evidence.

FIRST POINT**The decree of dismissal is against the weight of evidence**

It is of course within the right of the learned Vice Chancellor to believe or disbelieve what is testified to, but within limitations. We present to the Court such facts as we think entitle us to the relief we pray for and ordinarily speaking the credibility of witnesses here is for the Court; but when our testimony is corroborated by that of defendant's own witnesses we submit that it no longer remains in the Court to disbelieve, because such corroborations becomes absolute, in the manifest absence of any claim that the corroborating witnesses are prejudiced by bias or interest, made by defendant who called them.

For example, we have shown the two certificates of stock in the complainant corporation, recognized by both sides as the same in form, seal, etc. as the certificates in the stockbook (pp. 81, 107-108). We have the testimony of two of defendant's witnesses that the lost stock book had in it blank stubs on which nothing was written and witness Martin testified that he was told by Puhlman that a certificate had been signed by the latter as an officer in favor of Frank W. McNeal (p. 109-20). The certificates are produced (p. 44-20), the stock book is lost (p. 76-30) but a small book in which entries were made by Lynton S McNeal in 1901 is in evidence confirming the fact that he had assigned his 100 shares to his brother Frank W. McNeal (p. 136-40). No objection was made to the reception of this book in evidence and it

represents in a better way than parol testimony the contents of the burned stock book.

It is shown by defendant's own witnesses that the stockbook with the two certificates to name of Lynton S. McNeal pasted to the stubs, was knocking about for several years (p. 107-20), endorsed for transferring (p. 105-40), and, with papers *now* claimed to have been of value, the stockbook was left out of a safe and burned up. There is a difference of statement as to whether these certificates were marked "cancelled" or not, but as both sides testify in parol neither has the advantage, standing alone. It is only when the corroborative statements are given that the balance of credibility moves to complainant's side.

Added to all this is the exceedingly suggestive fact that the assignment from Lynton S. McNeal with its ink interlineations of important words is not produced in Court (p. 87-10); and when it is seen that the word "hundred" is interlined between "one" and "share" without any initial by the assignor to confirm it, (p. 115-10) we have a situation which is far from satisfactory. The entire case of defendant hangs on this unproduced paper; for as we shall show defendant was put upon inquiry and did not act although given due notice.

Thus far we have certificates produced for 100 shares, one half of the capital stock of the company and the *only certificates in existence*, which, at least in part, was known to the parties who managed the authorization and execution of a deed to defendant.

We have a failure to produce a crucial paper, the assignment, and when we examine the copy of the assignment given *supra* we find that it carries with it its own condemnation.

If, now, we see that the check which was given to cover the deed was not paid until two days after notice was given to both the Fidelity Trust Co., defendant's agents in the matter, and defendant itself (*vide* letters McNeal to Lafferty, p. 140, McNeal to defendant p. 143) we are warranted in wondering why payment was not stopped until matters could be examined into.

Lynton McNeal, when he was defendant's own witness testified that when he signed the assignment it called for but one share (p. 100). The learned Vice Chancellor does not believe him (p. 21-30) on the strength of a letter Lynton wrote to his brother (p. 151). But that letter was in response to a letter of the brother (p. 142) which taxed Lynton with assigning what was not his to assign. If we read the letters together, as they should indeed be read, the finding of disbelief is unwarranted, and we have another corroboration which strengthens our point.

It is admitted that no notice was given to Frank W. McNeal of the meetings of March and April, 1913, and the claim is made that he was entitled to none (p. 15-20). Why then was he given a notice to attend a meeting in December, 1914 (p. 49-20) when the same persons were in control of the company and would not permit Frank McNeal to take part in the meeting?

The production of certificates of stock by complainant standing in name of Frank W. McNeal, with proof and admission of his not having been give notice of meetings of March and April, 1913, requires more than parol proof to overcome.

We have shown that the certificates in name of Lynton S. McNeal, which assumed importance later, were pasted in the stockbook and the book left outside of the safe until burned in the fire of Jan-

uary, 1912. We have an interval of over a year after that before Lynton S. McNeal was sought for an assignment (note date, March 1st, 1913, p. 141-20), and the assignment bears the earmarks of having been raised from one to one hundred shares after execution by Lynton S. McNeal. Although witness Martin knew of the existence of certificates in name of Frank W. McNeal he made no inquiry of the latter. Now the only certificates in existence are produced and they are brushed aside as mere waste paper. This is error.

A certificate of stock stands on a footing similar to other muniments of title.

Lakewood Gas Co. v. Smith, 62 Eq., 677.

Clavenger v. Moore, 71 Law, 148.

Cook on Corporations, sec. 13.

Thompson on Corporations, sec. 3457.

It is *prima facie* evidence of title and ownership of the stock it represents.

Broadway Bank v. McElrath, 13 Eq., 24.

The opinion in the *Broadway Bank* case, at page 30, states that even if the alleged stockholder is one who presents a certificate of stock accompanied by an irrevocable power of attorney to transfer, he is the apparent owner and when he is the holder for value without notice, his title cannot be impeached.

Similar is the case *O'Connor v. International Silver Co.*, 68 Eq., 67; S. C., 68 Eq., 680.

“It is true that a certificate of stock is not the stock itself but it is documentary evidence of title to stock and may be used

for the purpose of symbolical delivery, as the stock itself is incapable of actual delivery.”

McAllister v. Kuhn, 96 U. S., 8.

All other proof in the case at bar as to the stock certificates, with the exception of the small book of Lynton S. McNeal (p. 136) is in parol, given five years after the stockbook was burned up and by persons whose acts form the groundwork of the execution and delivery of a deed to defendant, acts which they must naturally justify.

We shudder to think of the logical application of the decision in the case at bar, for if parties in possession of a stockbook which contains returned certificates should want to regard these certificates as alive and procure assignments from their former holders, they would escape any trouble from the persons who have the new certificates, by simply burning up the stockbook and testifying in parol that the stubs were blank etc.

Balancing the proof of complainant with certificates produced, evidencing just what was claimed, *i. e.* the ownership on one-half of the capital stock of the corporation in Frank W. McNeal, as against the parol testimony given on the other side, complainant's side weighs down and should entitle it to the relief prayed for.

The dates are noteworthy: Frank W. McNeal's stock is dated January 7th, 1902 (p. 137-30); Lynton McNeal's stock was in the stockbook, pasted to the stub, ten years, up to the fire of January, 1912 (p. 26-20); an entire year passed before the questioned assignment was made, March, 1913 (p. 141-20). These alone place suspicion upon the transaction attacked here; but when we see that Puhlman brought the books to witness Martin (p.

103-10), the books were knocking about the office for several years (p. 107-20), and while the stock remained untransferred, the one interested as real owner of the Wagner and Brown stock is Puhlman himself (p. 95-20), through an assignment which was procured by Puhlman from Lynton S. McNeal and appears with "one" share increased by interlineation to "one hundred" in a handwriting unlike that of the assignor (p. 95-10), we find a fabric which equity should condemn unstintedly, for it offends good conscience and savors of things uninviting; besides, it violates the rights of one who surely *claims* to have an interest and equity requires that such claimed interest have a consideration *before* the act of violation.

SECOND POINT

There is no element of estoppel involving complainant in the transaction

Fraud taints the matter from its inception, assuming our own contention, because there is no warrant whatever in law for the disregard of the half of capital stock owned by Frank W. McNeal and founding thereupon a transaction adverse to him or any kind of a transaction at all. Whether the stock was valid or not, it does not lie in the mouths of those using the corporation to say that, no matter if the acts were done without McNeal's knowledge or consent he did not own the stock and therefore was entitled to no notice and that by the same token he has no standing here. Therefore, that as defendant received a deed as the result of steps taken without notice to one claiming one-half of the stock of the complainant corporation, even though

Frank McNeal was a stockholder, he is now estopped (Conclusions, p. 22-20)! This is a most extraordinary proposition.

No matter what an individual stockholder may say, the corporation is an entity by itself; it consists of stockholders whose united word may pursuant to law bind the corporation, but it must be united; otherwise it is individual.

But it may be urged that Frank McNeal is estopped from now attacking the assignment of stock alleged to have been made by his brother, Lynton, the remarkable document which defendant does not produce, the outstanding feature of which is the interlineation of "hundred" between "one" and "share." There can be nothing warranting estoppel in the pasting of certificates to the stubs of the stock book. On the contrary the fact of the stockbook being allowed to lie around for several years and finally being burned up because it was on a shelf near Brown's desk at the time of the fire, would lead the reasonable man to believe that the stock was regarded as cancelled and therefore worthless; covering on its face one-half of the entire capital stock of the corporation it was valuable if not cancelled and pasted in the stockbook, especially as it was endorsed for transferring.

Estoppel must be a complete disposition of the trouble, not a partial one. It involves the rule that one will not be allowed to assert a right after he had by his own acts said or done something which led another, relying thereon by right, to act to his own injury. Defendant cannot plead estoppel on its answer, but the learned Court must have been misled by the letter of Lynton S. McNeal dated April 21, 1913 (p. 151), which compare with p. 21-40, and not have considered the letter

which brought it out (p. 142). Frank's letter explains Lynton's mention of an "assignment of 100 shares" and when defendant made Lynton its own witness (p. 100) his statements that when he executed the paper it called for but one share (p. 100-10) must be taken as concluding defendant. There is no estoppel of complainant here.

What has happened since the acts of the alleged stockholders and directors on the part of Frank W. McNeal cannot be considered on the line of estoppel, for defendant went ahead after being told that the one claiming to hold one-half of the capital stock of the corporation had received no notice, and the act of Frank McNeal cannot bind the corporation. There is no consideration running to Frank McNeal upon which to predicate an act favoring defendant.

When witness, Martin, knew that the Frank McNeal stock was outstanding (p. 109-30) and made no inquiry to learn all the facts (p. 110-20) he representing Puhlman and claiming to be counsel to the corporation (p. 110-10) failed to do what the law requires.

We are unable to follow the learned Vice Chancellor in his finding of estoppel (p. 22-20), especially that

"In any event, Frank W. McNeal permitted Lynton S. McNeal to do with it as he pleased and he is now estopped from questioning the acts of Lynton S. McNeal so far as third parties are concerned."

If there is any proof upon which to predicate such a finding we have missed it. The damage was done before Frank W. McNeal learned of it, but the important step remained for defendant to take, *i. e.* hold back payment of the check until the

truth had been learned, a physically possible act, instead of letting things go until the money was deposited in a Company which became bankrupt (pp. 92-3) and was partly distributed. Estoppel applies to defendant, however, as the situation was of their own making and they should have escaped it.

Note definitions of estoppel in *Mutual Life Ins. Co. v. Morris*, 31 Eq., 583 and *Brinkerhoff v. Brinkerhoff*, 23 Eq., 477.

THIRD POINT

The finding that defendant as a public corporation with right to condemn for railroad purposes, is entitled to more consideration, is erroneous (p. 23-10)

Trespass will lie against a corporation having right of eminent domain, which enters before the right of entry exists.

Lewis on Eminent Domain, sec. 931,
citing *Central R. Co. v. Hatfield*, 29
Law 206, 571.

St. Johnsville v. Smith, 184 N. Y., 341.

Defendant, even without notice which put it upon inquiry is not to be regarded as entitled to better treatment in equity than in law. "Equity follows the law."

FOURTH POINT

Defendant was placed upon notice which put it on inquiry to ascertain the true facts

We have already demonstrated that this was physically possible. It received verbal notice April 3, 1913 and written notice by letter of same date received by it. Its agents, the Fidelity Trust Co. received verbal notice April 3, 1913, and a letter of same date. The check had not yet been paid and it is significant that it was not even deposited until April 4, 1913 (p. 92-30) the day after notice, and not paid until April 5, 1913 (p. 139-40) two days after notice.

“The general doctrine is that whatever puts a party upon an inquiry amounts in judgment of law to notice, provided it became a duty, as in the case of purchasers or creditors, and would lead to the knowledge of the requisite fact, by the exercise of ordinary diligence and understanding.”

Hoy v. Bramhall, 19 Eq., 572, citin2g
4 Kent, 179.

Other decisions and many in this State follow this rule and it is so compelling as applied here that it determines the case.

FIFTH POINT**The Court committed reversible error in receiving and in rejecting evidence**

In ruling out, p. 49:

“Q. Who paid for the expenses of the company after 1906?”

This was important because it is a subject of judicial notice that a corporation must pay its taxes in order to be allowed to exist, and it had a mortgage of \$1,000 upon which but \$30 of interest was due when the title closed to defendant (p. 75-10). It was our intent to show that Frank W. McNeal paid these expenses and that his interest in the corporation was alive and confirmed by his acts.

In allowing, p. 61-30:

“Q. After that did you make any demands for part of the proceeds that were realized from the sale?”

And the inquiries which followed, finally resulting in the erroneous admission in evidence of Exhibit D-4, p. 146, objection p. 72-40, a judgment roll of a personal suit in conversion of Frank W. McNeal against William P. Martin in New York County.

The point of error lies in taking these as admissions of the corporation, especially at a time when the corporation was in adverse hands (1913) whereas they may have been mistaken remedies of the individual, which do not bind complainant. This was fatal error, for it revealed to the Court facts which it had no right to know, tending to mislead

it to the injury of complainant, whose difficulty is two-fold, one, that its property has been taken away by the acts of spurious stockholders and directors, and second, the proceeds are not within the control of its lawfully elected officers.

In allowing, p. 87-10:

“Q. For how many shares?

“Q. Mr. Lynton S. McNeal assigned how many shares?”

Contention will be made that we have no jury and therefore the error, if any, is bland. It has been held that care must be taken as to admission of evidence even when there is no jury, for it may bind one by failure to object, to his loss; the proposition being well laid that in the absence of objection the Court has a right to assume that the testimony is agreeable and the subsequent developments based on it properly founded. And we see that defendant went further:

In admitting as part of the question (p. 88-10):

“After you got to be the owner of the hundred shares, what did you do with them, transfer any?”

And remarking:

“That may be so but it won't change my mind at all.”

Our objection was a continuing one, for this assumption by defendant was taken for the purpose of appealing to the mind of the Court; for, otherwise, what would be the use of testimony at all? These were not all conclusions of law, but were plain assumptions of fact that would in the absence of objection have bound complainant. The ruling is entirely wrong, the issue being the

very one based upon use of stock to which the parties had no right whatever.

In admitting, p. 86-10:

“Q. Did you on that occasion hear Lynton McNeal say to Judge Martin in answer to Martin’s question ‘Why did you give this stock to Puhlman’ say ‘Why, I was under obligations to him, I was through with the company and I didn’t want to have anything more to do with it, and I gave it to him as a present, made him a present of it?’ ”

And the same question on p. 106-40, of witness, Martin.

This question was asked of Lynton S. McNeal (p. 34-40) for the evident purpose of discrediting the witness, but at any rate, it was a collateral matter, and when the witness answered, no, defendant was concluded by the answer. It was not allowed to introduce proof that this witness was wrong in his answer, and certainly not by leading the defendant’s witnesses instead of having them say in their own words what was heard. Lynton S. McNeal is not a party here and has no interest; in fact he was made defendant’s own witness on a particularly important question (p. 100).

It will be noted that complainant has sought to do equity while seeking it, by consenting that defendant’s expenditures on the property which were payments of taxes, etc. be made a lien thereon, in offset of rent (p. 9-20); but complainant asks an accounting for rent as part of its prayer for relief (p. 11-10).

Under the plea of general relief we believe it to be within the power and duty of the Court to have granted to the complainant some relief in any event, as it is in the anomalous position of not having its property or the proceeds realized from its alleged sale. We mention this, not for the purpose of in any way diminishing our contentions here made, but to add another item to the want of equity administered to complainant herein. Complainant is a corporation. Its mind is the act of its stockholders properly given. Its property belongs to all its stockholders. There is no due process of law in the method followed by the spurious stockholders. They simply *took a chance* in disregarding Frank W. McNeal's stock. When defendant and the Fidelity Trust Co. were notified on April 3, 1913, they too *took a chance* in going ahead in the face of the facts.

Is the act of stockholders whose sole right depends upon the assignment of certificates which were already pasted to the stubs of the stockbook, for which no money whatever was paid by them, to be glossed over as *de facto*, in the face of certificates produced which show title in one-half of the stock in another?

It should be found that this decree is erroneous and should be in all respects reversed, with costs in both Courts to complainant, and an allowance of counsel fees.

Respectfully submitted,

A. P. BACHMAN,

Solicitor and of Counsel with Appellant.

Dated, Newark, N. J., February 1st, 1918.

New Jersey Court of Errors and Appeals

Between

NEPTUNE MILDEW AND WATERPROOFING COMPANY,
Complainant-Appellant,

and

CENTRAL RAILROAD COMPANY
OF NEW JERSEY,
Defendant-Respondent.

Respondent's Brief.

Statement.

This suit is brought to set aside a deed executed in the name of the complainant, the Neptune Mildew and Waterproofing Company, to the Central Railroad Company of New Jersey. Said deed bears date April 2, 1913, and was delivered on that date and recorded April 4, 1913, in the Register's Office of Hudson County in Book 1149 of Deeds for said County, page 319. The deed was signed "Neptune Mildew and Waterproofing Company by Rudolph Puhlman, President," the corporate seal was attached and it was attested by Maxwell Wagner, secretary.

The question in the case relates to the validity of the deed and presents itself under the following aspects:

FIRST. Was the deed the act of *de jure* officers?

SECOND. If not was it the act of *de facto* officers?

THIRD. If of neither then is the complainant entitled to relief without tender of the purchase money?

FOURTH. Is complainant estopped from asserting its rights either because of its ratification or delay in bringing action?

FIFTH. Can the complainant maintain its bill to set aside the deed for property which is now in actual use by the defendant, a railroad company, in the operation of its railroad?

It is admitted (1) that the complainant was the owner of the land, the subject matter of the suit; (2) that a deed under the name of and what purported to be the corporate seal of the company and in due form to convey the fee was on April 2, 1913, delivered to the defendant company at which time the defendant paid the sum of \$5,000 from which amount the sum of \$2,004.58 was applied to the payment of liens against said land; (3) that the secretary's check of the Fidelity Trust Company to the order of the complainant for \$2,995.42 was delivered and was paid and as appears by an endorsement thereon the proceeds went to the credit of complainant company at the Roseville Trust Company; and (4) that said deed was attested by Maxwell Wagner as secretary, who made the usual proof (Exhibit C. 3, p. 131) to the effect that he was such secretary, that the corporate seal attached thereto was the corporate seal of the company and that it was affixed by order of the company and that Rudolph Puhlman, who signed it is president, was the president of the company and that he saw the latter sign said deed and heard him declare that he signed, sealed and delivered the same as his voluntary act and deed, by its order and that

the deponent signed his name thereto at the same time as an attesting witness.

It is further admitted that the complainant company had issued and outstanding two hundred shares of its stock of the par value of \$10 each.

The complainant's grounds for setting aside the deed are based upon the allegations that one hundred shares of its stock were owned by one Frank W. McNeal, who was and had been for a long time prior to April 2, 1913, the date of the delivery of the deed, a director, the secretary and treasurer of the company, and that Rudolph Puhlman and others (none of whom were connected with defendant R. R. Co.), on or about March 6, 1913, held meetings at which they represented themselves to be and were recognized as being stockholders and elected directors and officers of the company, both of which meetings were unlawful because no notice thereof had been given to Frank W. McNeal (pars. 5, 10 and 11 of the bill, pp. 7 and 8), and that the deed from complainant company was fraudulently issued (par. 12 of bill, p. 8).

The above claims of the complainant are denied by the answer of the defendant.

The defendant by its answer sets up the additional defenses: (1) (par. 18 of answer) that it paid full value for the land without knowledge of any irregularity in the proceedings of the complainant company in the election of the board of directors or otherwise; (2) (par. 19 of answer) that it was in no way connected with complainant; that it dealt with complainant, believing, as it now believes, that the persons who claimed to constitute the board of directors were in fact its lawful directors, and that if said persons, through any irregularity in their elec-

tion or qualification were not lawful directors, yet they constituted the *de facto* directors and as between the complainant and the defendant the deed executed by the president of the company, under its corporate seal, and attested by its secretary in pursuance of the resolution of said board is in all respects valid; (3) (par. 20 of the answer) that all the stockholders of complainant and said Frank W. McNeal had full knowledge of the conveyance from complainant to defendant and for three years acquiesced therein. The defendant has since that time with the knowledge of all complainant's stockholders and said Frank W. McNeal, made valuable and expensive improvements thereon; that the complainant has not tendered or offered to pay to the defendant the amount, or any part of the money paid to it for said lands or to make compensation to this defendant for the valuable improvements placed thereon and by reason thereof the complainant is estopped from claiming any interest in said lands and is in laches in bringing the suit.

Rudolph Puhlman delivered the stock and minute book of the complainant company to Judge Martin at his office where the same remained for some time when destroyed by the fire of January 9, 1912, in the Equitable Building, New York. The proof shows that the minute book showed that upon the organization of the complainant company there had been elected the officers following: Leopoldine Puhlman, president; John Woolney, vice-president; Lynton S. McNeal, secretary and treasurer, and Rudolph Puhlman, general manager and superintendent, all of whom were directors, except Rudolph Puhlman; that from the stock book it appeared that the stock stood in the names of the

persons following: Leopoldine Puhlman, 99 shares; John Woolney, 1 share and Lynton S. McNeal, 100 shares (case, 102 to 105, and 76 to 80).

When the opportunity came to the Waterproofing Company to sell its land it had been in a state of suspended animation for several years. Puhlman, the general manager, first brought the matter to the attention of Judge Martin, who was practicing law in New York with offices in the Equitable Building, for the purposes of having him establish how the company could be brought back to life, and left with Judge Martin the company's books which were examined by Judge Martin and Carl L. Brown, both of whom testified at the hearing. Judge Martin having assumed judicial duties, the matter of the reorganization of the complainant company was turned over to Treacy & Milton of Jersey City.

At a reorganization meeting of the complainant company held March 6, 1913, at the office of John Milton in Jersey City, there was produced an assignment from Lynton S. McNeal to Maxwell Wagner for one hundred shares (Exhibit C. 9, p. 141), in the form set forth in complainant's brief. One share from said one hundred shares was assigned to Carl L. Brown. There was also represented at the meeting the ninety-nine shares owned by the estate of Leopoldine Puhlman and one share held by Rudolph Puhlman—the one share formerly owned by John Woolney—making two hundred shares in all, the total issue of stock.

At said meeting Rudolph Puhlman, Carl L. Brown and Maxwell Wagner were elected directors and at a meeting of the directors held the same day, Rudolph Puhlman was elected

president and Maxwell Wagner was elected secretary and treasurer of the complainant company (case, 88 to 90).

At the stockholders' meeting a resolution was passed authorizing the board of directors to sell the land in question to the defendant company for \$5,000 and at the directors' meeting held the same day a resolution was passed accepting the offer of the defendant company and authorizing the officers of the complainant company to execute the instruments necessary to convey the lands upon the payment of the purchase price (case, 90 to 92).

Relying upon this resolution, and without knowledge of any outstanding claim of Frank W. McNeal to the ownership of one hundred shares of the stock of the company or of any irregularities, if any there were, in the election of the board of directors and officers of the complainant company, the defendant accepted the deed tendered and paid the price agreed upon.

FIRST POINT.

Was the deed the act of *de jure* officers?

The first matter to be considered is the ownership of the one hundred shares of stock originally issued to Lynton S. McNeal and claimed by Frank W. McNeal. The Court held the ownership at the time of the assignment to Maxwell Wagner to have been in Lynton S. McNeal and it is contended that this finding of fact is amply supported by the proofs.

If the proof sustains the Court's conclusion the officers were *de jure*.

Fifty shares of the stock were issued originally to Lynton S. McNeal for which he paid

\$500 into the treasury of the company. The remaining fifty shares standing in his name were a part of the original issue of one hundred and fifty shares to Leopoldine Puhlman (case, 27), and the one hundred shares so issued to Lynton S. McNeal were still standing in his name on the books of the company at the time of the reorganization meeting held March 6, 1913, although the certificates for them were in the possession of the company endorsed in blank. Rudolph Puhlman had reported to Judge Martin that Lynton S. McNeal felt under obligation to him and had given him the stock (case, 34 and 106). When McNeal was asked for an assignment of his one hundred shares he gave it without question.

In support of complainant's testimony, Lynton S. McNeal testified in substance that he was one of the original incorporators of complainant company, a holder of one hundred shares of the stock, a director and its secretary and treasurer until he sold his stock to his brother, Frank W. McNeal, December 26, 1901, but it also appears from his testimony that about March 1, 1913, he signed a waiver of notice of a stockholders' meeting of the complainant company (case, 33; Exhibit D. 1, p. 144), and an assignment of stock (case, 34), a copy of which assignment is printed as Exhibit C. 9, p. 141. In explanation of these transactions he says that Judge William P. Martin had summoned him to his office and stated to him that it was necessary for him to sign such papers because he, McNeal, had drawn the will of Mrs. Puhlman, then deceased, whose will had been destroyed in the fire of the Equitable Building and that it would be necessary for him to sign such papers in order for him to straighten out her estate

(case, 31). To bolster up his testimony he produced the address book of complainant company upon the seventh page of which was the following entry (case, 38):

“In consideration of the cancelling of the debt of \$500 I owe Frank W. McNeal, which he loaned me to purchase stock of the Neptune Mildew & Waterproofing Company, I have this day sold and issued to him certificates 3 and 5 for fifty shares each of said company, each certificate duly signed in blank on the back for transfer.”

This entry he says was made on December 26, 1901. The Court asked him:

Q Is that right, did you write that formal document in there? A Yes.

Q Merely as a memorandum? A There are other memorandums of the same type that I had taken from the books at different times that I put in; it was a peculiar case there the reason I put that down.

Q What was the reason you put that down in that form? A It was just around Christmas time, it was the day after Christmas, and I was rather disgusted with the entire company, and all that kind of business; and I passed over my stock to my brother and made that memorandum; that book I haven't seen in years until I found it out here in South Orange and I sent it out to him; it is more or less of a boy's book when you put it down that way.

There are other entries in said book referring to the stockholders of the company, giving the number of shares and their addresses, but we submit that the entries so made were pure fabrications gotten up for the purpose of this suit.

He denies when asked by Judge Martin why he had given the stock to Puhlman that he had replied that he was under obligations to him, that he was through with the company and did not want to have anything more to do with it (case, 34), yet both Judge Martin and Maxwell Wagner say that that is substantially what he said (case, 106 and 86).

Lynton S. McNeal says (case, 100 to 101), that the assignment to Maxwell Wagner was for one share, but (case, 101), in answer to a question by the Court, he said:

Q But you had assigned only one share?

A Only one share, as I recall it.

And again in answer to a question asked him in reference to said stock (case, 32), he said as he recalled it the assignment was for one share.

In explanation of the interlineation of the "hundred" in said assignment, John Milton in answer to the following question said:

Q It now appears that in the certificate there was written the word "one" and that afterwards there was inserted the word "hundred" after "one" or before "shares"; can you tell us how that happened? A I can't tell you exactly how it happened, but I know this, at that time my recollection is that I was drawing a series of papers which were intended to revive or revivify this company, and I think I dictated a complete set of minutes and resolutions and by-laws and transfers of stock as a series of forms; they were to be sent to Judge Martin, my recollection goes, and that Mr. Puhlman came over from Martin's office, and I think he was to go up somewhere in Massachusetts, this Mr. McNeal was on a government survey of some kind or on a boat off

Cape Cod, I think, somewhere up that way, and the stenographer brought this series of documents in and I examined them and I think Puhlman was waiting and running over them; I think this assignment was for one share, and my recollection is that Lynton S. McNeal held a hundred shares and I said, "now, change that form to one hundred," and I assume the document had been rewritten, and Puhlman sat in the outside office when the papers were handed in by the stenographer and the next time I saw the paper it had the one hundred written in.

Q In ink? A Yes, sir.

Q Then it was signed? A No, sir.

(Case, 117 and 118.)

In conjunction with Lynton S. McNeal's testimony in reference to the assignment to Maxwell Wagner should be read his letter to his brother, Frank, dated April 21, 1913 (Exhibit D. 7, p. 151), in which he says:

"About my assignment of one hundred shares of the Neptune Mildew Proofing stock dated March 1, 1913, to Maxwell Wagner."

Frank W. McNeal testified in substance that his brother, Lynton S. McNeal, assigned in blank and issued to him one hundred shares of the stock and that he, Frank, with his one hundred shares and Rudolph Puhlman with the John Woolney certificate for one share and the certificate or certificates of his deceased wife for ninety-nine shares, held a meeting at which he was elected secretary and treasurer and Rudolph Puhlman was elected president (case, 44 and 45). No specific mention is made of any stockholders' meeting at which directors were

elected, but from his rambling testimony it might appear that the board consisted of himself, Rudolph Puhlman and John Woolney; that at a directors' meeting he surrendered the one hundred shares issued to his brother and wrote with red ink in a bold hand twice across the face of each certificate the word "cancelled" and that he also wrote on the stubs from which such certificates had been torn the word "cancelled" (case, 45); that at such meeting he prepared two certificates to himself for fifty shares each which were signed by Rudolph Puhlman, president, and himself as treasurer (case, 55), but admits that Mrs. Leopoldine Puhlman was then dead and that her will had not been probated (case, 56). He further says that in the minute book of the complainant company there were written and signed by him minutes of a number of meetings (case, 52 to 55).

This statement as to the minutes is contradicted by Carl L. Brown (case, 79 and 80), and Judge Martin (case, 103 and 104), in which they both say that there were no minutes of any meetings held in 1902 or afterwards, and that there were no minutes of any meetings signed by Frank W. McNeal as secretary, or anything in the minute book to show that he had any interest whatever in complainant company.

Frank W. McNeal's statement as to the cancellation of the certificates is contradicted by both Carl L. Brown (case, 77 and 78), and by Judge Martin (case, 106), both of whom say there were no indications on the certificates or the stubs of the cancellation thereof.

The certificates held by Frank W. McNeal were not legally issued to him. When he obtained them, Rudolph Puhlman seems to have had in his possession or under his control one

share formerly issued to John Woolney and ninety-nine shares owned by the estate of his deceased wife upon whose estate no letters had been issued. Frank W. McNeal had in his possession the one hundred shares issued to his brother (case, 56). They had no proxies (case, 66). Rudolph Puhlman was the general manager and superintendent, but not the president. The complainant was evidently out of the active business for which it had been incorporated (case, 50), and Frank W. McNeal seems to have been running a business on the premises in question as he says there was no use of giving written notice (of the meetings) as "we were all there, all there at the shop."

On the whole it appears to us that the version of the transaction as given by Rudolph Puhlman to Judge Martin seems the more reasonable, *i. e.*, that Puhlman and Frank W. McNeal had gone over to McNeal's New York office where the certificates were made out by said Frank W. McNeal and signed by Puhlman as president and by Frank W. McNeal as treasurer (case, 109). Especially does the Puhlman version seem to us to be the correct one when we consider that there were no minutes of any meetings after the death of Leopoldine Puhlman. It is true that Frank W. McNeal said that there were written in the minute book and signed by him minutes of this and numerous other meetings subsequently held (case, 52 to 55), but his statement, as shown before, was contradicted by Carl L. Brown (case, 79 to 81), and Judge Martin (case, 103 and 104), both of whom say that there were no minutes of any meeting had in 1902 or afterwards and that there were no minutes of any meeting signed by Frank W. McNeal as secretary. From these statements

made by Frank W. McNeal and contradicted by two witnesses whose credibility cannot be impeached or questioned the Vice-Chancellor was clearly right in disbelieving anything Frank W. McNeal said.

It will be observed that from Frank W. McNeal's own version of the manner by which he obtained the certificates, *i. e.*, at a meeting held by him and Rudolph Puhlman, neither of whom had a share standing in his name on the books of the company, and without proxies, clearly shows that he did not become and was not a stockholder of record.

When the complainant was taking steps to reorganize, Rudolph Puhlman individually was not the record holder of any stock although he had in his possession one share of stock originally issued to John Woolney and after the probate of his wife's will in 1913 as executor of his wife's estate had the control of ninety-nine shares. It appeared from the books of the company that Lynton S. McNeal held one hundred shares, those now claimed by Frank W. McNeal. They procured from Lynton S. McNeal an assignment of his one hundred shares, making the total issue of stock. There was nothing on the books of the company to show that Frank W. McNeal was in any way interested therein (case, 79 to 81, 103 to 104), or that the stock originally issued to Lynton S. McNeal had been cancelled (case, 77, 78 and 106).

If the certificates held by Frank W. McNeal were not legally issued, and I think we have clearly shown they were not, then Lynton S. McNeal was still a stockholder of record and since the physical possession of the stock issued to him was not in Frank W. McNeal or in anyone else (the stock being then in the book of the

company) his assignment to Maxwell Wagner was valid and his waiver of notice of the meeting to be held March 6, 1913, precludes him and anyone claiming under him from questioning the legality of such meeting. The transfer book, which in this case was probably the stock book, determined who were entitled to vote for the election of officers (C. S. 1624, Section 40) and as said before it nowhere appeared in this book that Frank W. McNeal was a stockholder of record.

If we assume for the sake of argument that Frank W. McNeal was a stockholder of record and was the owner of the stock still it does not follow that the election was illegal for the reason that the by-laws may have provided that less than a majority in number of shares should constitute a quorum (C. S. 1622, Section 34) and since that is possible the complainant had the burden of proof of showing that less than a majority does not constitute a quorum. No such proof was offered.

SECOND POINT.

If the deed was not the act of de jure officers was it the act of de facto officers?

Assuming that Lynton S. McNeal was not the true owner of the stock and that Frank W. McNeal was the owner thereof, nevertheless, the regularity of the election of those claiming to be officers cannot be questioned collaterally and the act of the officers in making the deed to the Central Railroad Company being the act of *de facto* officers is valid.

The record shows that there was what purported to be a meeting of the complainant company which elected a board of directors and au-

thorized the sale of the property to the Central Railroad Company. That the board of directors chose out of their numbers the officers of the company and passed proper resolutions for the sale of the land with instructions to its officers to make conveyance thereof. At this meeting one-half of the stock was unquestionably property represented. If the other half of the stock was not represented it was only because the ownership of the stock was in dispute and the stockholders' meeting relying upon the books of the company and acting under legal advice had recognized as the true holders of the stock others than the real owners. Under these circumstances it surely may be properly said that the officers of the company were at least *de facto* officers. Especially so when their acts were known by its stockholders and concurred in by them, for even Frank W. McNeal approved of their act and the sale of the property, merely contending that he as the true owner of half of the stock was entitled to half of the proceeds of the sale.

In the case of *Hackensack Water Company v. DeKay*, 36 N. J. Eq. 548-558, the facts were that the charter provided for an organization and election of directors as soon as \$20,000 of the capital should be subscribed and paid in; and that statute forbid the election of any person as a director who was not at the time a *bona fide* holder of some of the stock of the corporation. At the organization and election of directors very little of the stock had been subscribed for and paid in, in fact the paid-up subscriptions were never such as to authorize an organization under the act of incorporation. Court of Errors, by Depue, *J.*, says:

“It is indisputable that the organization was illegal and that the directors had not

the legal qualification for their offices. But it is also undeniable that there was an organization in form and that the company became a corporation *de facto* and its directors officers *de facto* under color of an organization and of an election. * * * The general rule of law is that the regularity and validity of the organization of a corporation effected under color of its charter cannot be impeached in any collateral proceeding, and that the acts of its officers, who are officers *de facto* under color of election, are valid and binding upon the corporation.”

In *Savage, Receiver, v. Ball*, 17 N. J. Eq. 142, in which there was a bill filed praying for an injunction restraining an action at law upon a note the Court says (p. 144):

“The bill further charges that the directors of the company by whom the note was authorized to be executed were not legally elected and were not qualified to act as directors for various reasons, and among others because at the time of their election they were not stockholders of the company. * * * But if it be admitted that the answer upon this point is not satisfactory and that the directors were neither duly qualified nor legally elected it would not effect the validity of the note. It is admitted that the directors by whom the note was authorized to be made, were by color of election directors *de facto*. The act of an officer *de facto* is good wherever it concerns a third person who had a previous right to the act or had paid a valuable consideration for it.”

In *Mechanics National Bank, of Newark, v. H. C. Burnet Mfg. Company*, 32 N. J. Eq. 236-238, the Court says:

“If the officers selected are ineligible or are elected irregularly or illegally, but are allowed by the proprietors of the corporation to take control of its property and to exercise its functions and powers they become officers *de facto* and as such may act for and bind the corporation. An officer *de facto* is one who has the reputation of being the officer he assumes to be and yet is not a good officer in point of law. From a very early time it has been held that the acts of *de facto* officers are binding upon the corporation until they are lawfully ousted, especially so far as their acts create rights in favor of a third person.”

In the case of *Hackensack Water Company v. DeKay, Depue, J.*, cites with approval *Mahoney v. East Holyford Mining Company*, L. R. (7 H. of L. 869), as follows:

“The memorandum and articles of association of a mining company were registered and subscriptions for shares were obtained and paid into a bank. The banker received a formal notice signed by a person who described himself as secretary to pay checks signed by either of three directors named and countersigned by himself in accordance with ‘a resolution passed this day’, a copy of which was enclosed. The banker received and paid checks so signed and countersigned. It afterwards appeared that there never had been a meeting of the shareholders, nor any appointment of directors or of a secretary, but that the persons who had got up the company had

treated themselves as directors and secretary and appropriated the money obtained from the subscribers. It was held that the banker having paid out these moneys *bona fide* was protected in so doing by the instructions under which he acted."

In *Kuser, et al. v. Wright, Receiver*, 52 N. J. Eq. 825, the bill was filed to set aside two mortgages on the ground that at the time of the execution thereof there were only two directors of the Ott and Brewer Company while the statute of this state requires that there should be three. The Court of Errors by Van Syckel, *J.*, says (p. 827):

"The point made against these mortgages is that under our statute there must be at least three directors to manage the corporate business and that by the assignment made by Bell for the benefit of his creditors he ceased to be a stockholder, and by force of the statute ceased at the same time to be a director of the company, thereby leaving the corporation without a board of directors legally qualified to conduct its affairs.

"That such result justly or legally flows from those premises cannot be conceded. It is apparent that dealing with these corporate bodies would be in the highest degree hazardous and unsafe if the public, without notice in fact, is chargeable in law with knowledge of a latent infirmity in the title of every director of the company. A doctrine so destructive to the security of commercial transactions, now so largely conducted by corporate action, has no support in law."

And after citing numerous cases the Court says: "Under these cases, the fact that no notice of the meeting of the directors, at which the mortgages were authorized, was given to Bell cannot affect the validity of these securities. This is a subject into which those who are dealing with a corporation are not bound to inquire."

THIRD POINT.

If the deed was not the act of either de jure or de facto officers then the complainant is not entitled to relief without tender of the purchase price.

This is not the ordinary case of cancellation. Such relief, as we understand it, is granted only in case of accident, mistake or fraud. It is true that the complainant in his bill alleges (par. 12, p. 8), "that such deed was made without lawful right and was a fraud upon the rights of complainant and Frank W. McNeal," but there is nothing in the proof which tends to show, nor is it urged, that the defendant was a party to such fraud. The complainant contends that the deed is not its deed. If this is so, its remedy is at law and not in equity.

In the case of accident, mistake or fraud ordinarily complainant must restore the defendant to the condition in which he stood before the transaction. This requirement is based upon the maxim that he who seeks equity must do equity.

Pomeroy Equity Jurisprudence, Section 688; *Van Zile Equity Pleading Practice*, Section 422.

In *Pidcock v. Swift*, 51 N. J. Eq. 405-408, the Court says:

“There can be no doubt that the general rule, both at law and in equity, is, that the party who would recover back, on the ground of fraud, what he has parted with under the contract, must, before bringing suit, offer to return whatever he has received under the contract and which he is able to return.”

In this case no tender was made or offered. By the fourteenth paragraph of the bill, p. 9, the complainant says:

“On information and belief, defendant has paid or caused to be paid certain taxes and other charges upon said real property which payments complainant hereby offers to have made a lien on the real property and as an offset against the claim for rental herein sought to be enforced.”

No offer is made to return the \$2,995.42, the amount paid to the complainant and actually deposited to its credit in the Roseville Trust Company.

FOURTH POINT.

If the deed was neither the act of de jure or de facto officers then the complainant is estopped because of its delay in bringing action and of its stockholders ratification.

It is entirely clear that the directors of a corporation can ratify the unauthorized act of their agents and likewise the stockholders can ratify the unauthorized act of their directors.

In the case of *Metropolitan Telephone Company v. Domestic Telephone Company*, 44 N. J.

Eq. 568-578, the facts were that some of the members of the executive committee of the Bell Telephone Company, afterwards merged into the Metropolitan Telephone Company, met with some of the members of the executive committee of the Domestic Telephone Company and entered into a certain agreement. The Domestic Company carried out its part of the agreement with knowledge of the directors of the Metropolitan Company. The Court held that:

“The Metropolitan Company by acceptance of the Domestic Company’s performance of the condition contained in the proposition, under circumstances indicating knowledge thereof, recognized and ratified the unauthorized act of the trustees of the Bell Company in making a proposition, and, by accepting and retaining the purchase money, has estopped itself from denying either the existence of the contract or its liability thereunder.”

In *Bennett v. Millville Improvement Company*, 67 N. J. L. 320, it is stated:

“A corporation is bound by the acts of its president within the apparent scope of his authority which it authorizes, acquiesces in or accepts the benefit of.”

In *Day v. Fairview*, 62 N. J. L. 621, it is stated:

“The ratification of assent and signature of an agent of the corporation will estop the corporation from objecting on the ground of want of original authority.”

In *Arnold v. Searing*, 73 N. J. Eq., 262-265, the Court says:

“There appears to be no dissent to the general proposition that a corporation can-

not complain of a transaction to which all of its stockholders assent with full knowledge of the facts, and if a corporation cannot complain it necessarily follows that a stockholder cannot on behalf of the corporation.”

In *McAlpin v. Universal Tobacco Company*, 57 Atl. Rep. 802, it was said:

“Where stockholders of a corporation at a meeting legally called voted to ratify the acts of its officers and directors * * * such ratification was equivalent to an original authorization.”

Therefore if we assume for the sake of argument that Frank W. McNeal is a stockholder then he ratified the act of the officers so far as he was concerned—and there is no other dissenting stockholder—(a) by demanding from the Fidelity Trust Company (Exhibit C. 8, p. 140) one-half of the proceeds from the sale; (b) by notifying Judge Martin (Exhibit D. 11½, p. 144), that one-half of the check belonged to him; (c) by his demand as treasurer upon Judge Martin for the check given in payment for the land (case, 61 and 62); (d) by his suit against Judge Martin for conversion of one-half of the proceeds of said check (case, 62 and 64, Exhibit D. 4, p. 146); and (e) by his statement on the stand in the suit of himself *v.* Judge Martin concerning the sale price, “It is a dandy, big, good price, and I have no objection to it as far as any price is concerned.” (Case, 65.)

Complainant is in laches because it stood by for three years and saw the defendant make extensive improvements to the property. In fact defendant has built a very large round house, which is used in conjunction with its main line, a part of which covers the land in question.

In *Brady, et al. v. Atlantic City*, 53 N. J. Eq. 440, the complainants, stockholders of the Atlantic City Water Company, sought to enjoin the sale of the property of the said company to the city. Negotiations for the sale had been pending for about two years and condemnation proceedings had been taken by the city when an agreement as to price was reached. They had taken no part in the meetings of the company. The Court held they had been guilty of laches and in consequence thereof under the circumstances of the case were estopped.

In *Rabe, et al. v. Dunlap*, 51 N. J. Eq. 40, the stockholders of one of four merged companies had laid by for three years and third persons had acquired rights under the merged corporations. The Court held they were in laches.

In *Cheetwood v. Berrian*, 39 N. J. Eq. 203, affirmed 39 N. J. Eq. 517, complainant lived with his agent for over a year after discovering that he had without authority assigned his mortgage. The Court held that his delay in instituting suit against the assignee of the mortgage constituted a ratification and an estoppel as against the defendant assignee.

FIFTH POINT.

Can the complainant maintain its bill to set aside the deed for property which is now in actual use by the defendant, a railroad company, in the operation of its railroad?

The property is a part of the round house of the defendant which joins its main line and is a part of the property necessary for the conduct of defendant's business (case, 120 to 123).

The defendant had the right to take the property by eminent domain. Section 13 of the Act

of the General Railroad Law (Rev. 1903), C. S. p. 4224 provides:

“Any railroad company may, either at the time of its organization or construction or afterwards, as occasion may require, take by condemnation any of the lands and property required for its right of way of its main line and branches * * * and such other land and property adjoining such right of way as, in the judgment of the directors, the exigencies of business may demand for the erection of freight and passenger depots and all other legitimate purposes of the company.”

This Court will not interfere where the property is in the possession of a corporation possessing the right to take same by eminent domain.

Answering Complainant's Brief.

The first point of complainant's brief is fully answered by the first and second points of defendant's brief.

The second point of complainant's brief is fully answered by the fourth point of defendant's brief except the allegation that defendant had made Lynton S. McNeal its own witness. He was called for further cross examination and aside from that his testimony then given must be taken in conjunction with his other testimony.

The third point of complainant's brief is fully answered by the fifth point of defendant's brief.

Answering complainant's fourth point the defendant says that no notice was given of the claim of Frank W. McNeal until after the deed had been delivered and the check of the Fidelity

Trust Company given in payment therefor. Nor is there any evidence which shows or offers to show that the Fidelity Trust Company was the agent of the defendant after the deed had been received and the check given therefor. The mere fact that funds were placed in the custody of the Fidelity Trust Company to be paid out upon the delivery of the deed did not constitute it an agent of the defendant for any other purpose, and when it had paid for such deed its agency was at an end.

Answering complainant's fifth point the defendant says that the Court's rulings on the evidence were right.

In ruling out (c. 49):

“Q Who paid for the expenses of the company after 1906?”

This was a suit brought by the complainant to set aside a deed given to the defendant, an innocent purchaser for value. We therefore submit that it can make no difference who paid the expenses of the complainant. Certainly the defendant was not bound to make any such inquiry before accepting the deed.

In allowing (c. 63):

“Q After that did you make any demands for part of the proceeds that were realized from the sale?”

The question was admissible because it was on cross examination and was intended to show a ratification, so far as Frank W. McNeal was concerned, of the deed of the officers, and his answer showed such ratification.

In allowing (c. 87):

“Q For how many shares?

“Q Mr. Lynton S. McNeal assigned how many shares?”

The complainant cannot object to this question for the reason that he established by cross examination the loss of the instrument assigning the shares (Case, 96), and offered in evidence a copy thereof marked Exhibit C. 9, p. 141.

In admitting as part of the question (c. 86):

“After you got to be the owner of the hundred shares, what did you do with them, transfer any?”

If it were objectionable it was harmless because after the complainant had objected to the form of the question as an assumption not warranted by the facts the Court says:

“That may be so, but it won't change my mind at all.”

In admitting (c. 86):

“Q Did you on that occasion hear Lynton McNeal say to Judge Martin in answer to Martin's question, ‘Why did you give this stock to Puhlman say: ‘Why, I was under obligation to him; I was through with the company and I didn't want to have anything more to do with it, and I gave it to him as a present, made him a present of it?’”

This, as we understand, is the rule for laying a foundation for the purpose of contradicting a witness.

It is respectfully submitted that the record shows no error and that the decree of the Court of Chancery should be, in all respects, affirmed.

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LOUIS HOOD,

Of Counsel.

