INDEX.

PAGE.

Notice of Appeal 1
Petition of Appeal 2
Answer to Petition of Appeal 5
Bill of Complaint 6
Answer of Henry M. Denton and Millicent S. Denton 24
Answer of Robert L. Shaw 39
Interlocutory Decree 89
Colloquy 93, 103, 115, 706, 900

TESTIMONY.

FOR COMPLAINANTS:

WILLIAM HOGENCAMP:

Direct 96
Recalled:
Direct 109
Cross 112
Resumed:
Direct 125
Recalled:
Direct 181
Recalled:
Cross 195
Re-Direct 356
Recalled:
Re-Direct 518
Re-Cross 537
Recalled:
Re-Direct 616
Re-Cross 644

PAGE.

Re-Direct 678

Recalled:

Direct 897

HENRY M. DENTON:

Direct 102

Cross 102

Recalled:

Direct 776

Cross 827

Re-Direct 881

MERRITT LANE:

Direct 178

Cross 179

JAS. N. P. REILLY:

Direct 188

Cross 189

WILLIAM J. FIELD:

Direct 193

Cross 194

ROBERT S. HUDSPETH:

Direct 450

Cross 481

SAMUEL LUDLOW, JR.:

Direct 483

Cross 484

Recalled:

Re-Direct 511

GEORGE W. BLACK:

Direct 689

Cross 689

Re-Direct 704

PAGE.

FOR DEFENDANTS:

THOMAS O'CALLAGHAN:

Direct 707
Cross 751
Re-Direct 774
Recalled—
Direct 915

COMPLAINANTS' REBUTTAL:

WILLIAM HOGENCAMP:

Direct 909
Cross 910

EXHIBITS.

Synopsis of all exhibits printed at 920

New Jersey State Library

Notice of Appeal.

In Chancery of New Jersey.

Between ROBERT S. HUDSPETH, trustee and the Second National Bank of Jersey City, *Complainants,* *and* HENRY M. DENTON, MILLICENT S. DENTON and ROBERT L. SHAW, *Defendants.*	On Bill, etc. Notice of Appeal.

To VREDENBURGH, WALL & CAREY,
Solicitors for Defendants.

SIRS:

The complainants hereby appeal from the Interlocutory Decree made herein by his Honor, the Chancellor, on the 17th day of May, 1912, and from each and every part of such interlocutory decree, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

HUDSPETH & LANE,

Solicitors for and of Counsel with the complainants.

Dated June 14th, 1912.

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

MERRITT LANE,
Of Counsel with Complainants.

Petition of Appeal.

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

The petition of Robert S. Hudspeth, Trustee and the Second National Bank of Jersey City, Complainants and Appellants, in the above entitled cause respectfully show,

That the petitioners find themselves aggrieved by Interlocutory Decree made in the Court of Chancery by his Honor Edwin R. Walker, bearing date the Seventeenth day of May, A. D., nineteen hundred and twelve, wherein the said S. Hudspeth, Trustee and the second National Bank of Jersey City are Complainants and Henry M. Denton, Millicent S. Denton and Robert L. Shaw are Defendants, in this respect to-wit, that the said decree, orders adjudges and decrees that the Complainant in this suit is entitled to have the benefit of the mortgage in suit, to no other extent than it may be found upon the accounting, that Henry M. Denton owes to William Hogencamp money realized by him upon the said stock of the Second National Bank, owned by the said Hogencamp and transferred and loaned by him to the said Denton, and in that the said decree refers to John F. Gough, one of the Masters of the Court of Chancery to take such account, upon the ground that the same is erroneous, for that the Court of Chancery should have found that the sale alleged to be made in the month of April, 1900 by Hogencamp to Henry M. Denton, of one hundred shares of stock was a bone fide sale, and the receipt by said Hogencamp of two certain promissory notes for Twelve thousand dollars each, give full and complete title to said Hogencamp of said notes; and in that the Court of Chancery should have held that the said

note of Robert L. Shaw of Twenty-four thousand dollars was discounted at the Second National Bank for the benefit of either Shaw or Denton, and in that the said Court of Chancery should have held that the Second National Bank of Jersey City held as collateral security for the loans made upon the notes aforesaid up until the 20th day of August, A. D. nineteen hundred and one, the one hundred shares of stock of the Second National Bank and that upon that day or thereabouts such collateral was surrendered and there was taken in exchange by the said Bank among other things the mortgage in suit; and in that the said Court of Chancery should have held that the said Second National Bank of Jersey City held for itself or its Trustees the mortgage in suit as collateral security for the payment of the loan from that date up to the present time; and in that the Court of Chancery shoul have held that the said Henry M. Denton permitted the said Hogencamp to do as he did with said mortgage and the Second National Bank of Jersey City acquired the said mortgage with the consent of the said Henry M. Denton as collateral security and held it as collateral security with the consent of the said Henry M. Denton, and that the said Henry M. Denton, Millicent S. Denton and Robert L. Shaw are estopped from denying the right of the Second National Bank through its trustee to recover upon said mortgage the full amount due upon the note or upon any amount due from Hogencamp to said Bank and in that the Court of Chancery should not have held that said Hogencamp, subsequent and in the year Nineteen hundred and five, by arrangement between himself and the Second National Bank, secured the return to him Hogencamp of the Shaw notes, to which the mort-

gage in question was collateral as aforesaid, and the mortgage in question, and thereafter re-pledged the same to the said Bank, for whom the Complainant is Trustee in this connection; and in that the Court of Chancery should have held that the Second National Bank of Jersey City always held the said mortgage subject to no defense, so far as the said Defendants are concerned, and was always entitled to enforce it to secure itself for the balance due upon the notes; and in that the Court of Chancery should have held that the Second National Bank through its trustee is entitled to recover the full face value of said mortgage, and in that the Court of Chancery should have ordered a foreclosure of said mortgage and a sale of the premises to raise the amount so due to the said Bank; and in that the Court of Chancery never found that there was more due from Henry M. Denton to the said Hogencamp than the face of said mortgage, and that if the theory of the Court of Chancery be correct there was no necessity for an accounting; and in that the Court of Chancery should have made a decree in favor of the Complainants, with costs and reasonable counsel fee.

Your petitioner therefore prays, that the said Interlocutory decree of the said Chancellor made in the premises aforesaid, be reversed, set aside and for nothing holden, and that the Court of Chancery may be directed to make a proper Decree, and that your petitioner may have such other and further relief in the premises as to your Honor shall seem meet.

MERRITT LANE,

Sol'r for and of Counsel with Complainants.

Answer to Petition of Appeal.

The answer of the above named respondents to the petition of appeal of the above named appellants.

These respondents, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto nevertheless say and admit, that an interlocutory decree was on the seventeenth day of May, nineteen hundred and twelve, made and entered in the Court of Chancery of New Jersey in the cause for that purpose mentioned in said petition of appeal as is therein stated, but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

VREDENBURGH, WALL & CAREY,
Solicitors and of Counsel with said Respondents.

Bill of Complaint.

In Chancery of New Jersey.

To the Honorable MAHLON PITNEY, Chancellor of the State of New Jersey.

HUMBLY COMPLAINING, shows unto your Honor, your orator Robert S. Hudspeth, Trustee, and The Second National Bank of Jersey City, in the County of Hudson and State of New Jersey, That on or about the first day of September, A. D. Nineteen hundred, Henry M. Denton, then of the City of New York, in the Borough of Manhattan, became and was justly indebted unto William Hogencamp, of the Borough of Deal, in the County of Monmouth, State of New Jersey, in the sum of Twelve thousand Dollars ($12,000.), and being so indebted, the said Henry M. Denton, in order to secure the payment of the said sum of money, with interest, did make and execute under his hand and seal and deliver unto the said William Hogancamp a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of Twenty-four thousand Dollars (24,000.), lawful money of the United States, with a condition thereunder written that if the said Henry M. Denton, his heirs, executors or administrators, should well and truly pay or cause to be paid unto the said William Hogancamp, his executors, administrators or assigns, the just and full sum of Twelve thousand Dollars ($12,000.), with interest on the first day of September, which would be in the year One thousand nine hundred and one, and the interest thereon to be computed from the first day of September, A. D. Nineteen hundred, at and after the rate of six per cent per annum, and to be paid semi-annually, without any

fraud or other delay, then the said obligation to be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And Your Orators Further Show, that the said Henry M. Denton, in order to secure the payment of said sum of money above mentioned, together with the interest thereon, executed and delivered unto said William Hogancamp a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Henry M. Denton and Melicent S. Denton, his wife, party of the first part, to the said William Hogancamp, party of the second part, whereby the said party of the first part did grant, bargain, sell, alien, release, convey and confirm unto said party of the second part, his heirs and assigns forever, All those certain pieces or parcels of land and premises hereinafter particularly described, situated, lying and being in the County of Ocean and State of New Jersey, as follows:

First: Being the homestead farm of Charles L. Holman and composed of three separate tracts of land more particularly described as follows:

First Tract.—Containing twenty-five acres and eighty one-hundredths of an acre, and being the same tract of land and premises conveyed by James D. White and wife to Charles L. Holman, by deed bearing date the eighteenth day of April, A. D. Eighteen hundred and sixty-seven, and recorded in the Ocean County Clerk's Office in Book 38 of Deeds, pages 369, etc.

Second Tract.—Containing three and twenty-one hundredths of an acre, by the same more or less, and being the same tract of land that was

convey to George H. Holman by deed from Charles L. Holman and wife, dated the twenty-fifth day of July, Eighteen hundred and ninety-two, and recorded in the Ocean County Clerk's office in Book 190 of Deeds, page 144, etc., with reference thereto for a more full description.

Third Tract.—Containing fifty-six and fifty-four one-hundredths acres, be the same more or less and being the same tract of land and premises that was conveyed to Ross C. Browning by Joseph E. White and wife and William E. P. White and wife, by deed dated May thirty-first, Eighteen hundred and ninety-four, and recorded in the Ocean County Clerk's office, in Book of Deeds 206, pages 449, etc., with reference thereto for a more full description. Excepting and reserving out of the above tract of land containing seven acres and thirty-four one-hundredths of an acre, more or less, and being the same tract of land that was conveyed to Eliza A. Newell by James D. White and wife and Charles Holman and wife, by deed dated September first, Eighteen hundred and seventy and recorded in the Ocean County Clerk's office, in Book 53 of Deeds, page 383, etc., with reference thereto for a more full description.

SECOND: Being the homestead of James D. Holman and containing one acre, more or less, and being the same property conveyed by George H. Holman and wife to James D. Holman, by deed dated the sixth day of February, A. D. Eighteen hundred and eighty-eight, and recorded in the Ocean County Clerk's office in Book 157 of Deeds, pages 165, etc., with reference thereto for a more full description.

THIRD: Being part of the Wesley B. White tract

and containing fifty acres, more or less, and being the same tract of land that was conveyed to Charles L. Holman by deed from George W. Holman and wife, and deed bearing date the second day of May, Eighteen hundred and eighty-five, and recorded in the Ocean County Clerk's office in Book 136 of Deeds, page 440, etc., with reference thereto for a more full description.

FOURTH: Being the same tracts of land and premises conveyed by James W. Bennett and wife to Charles L. Holman and James D. Holman, by deed bearing date the sixteenth day of May, A. D. Eighteen hundred and eighty-eight, and recorded in the Ocean County Clerk's office in Book 158 of Deeds, pages 138, etc. consisting of a tract of five and eighteen one-hundredths acres, a tract of ten acres, a tract of eighteen and fifty-seven one-hundredths acres, a tract of five and forty-one one-hundredths acres, a tract of five and eighteen one-hundredths acres, a tract of twenty-three and fifty-one one-hundredths acres, a tract of eight and fifty-seven one-hundredths acres, and a tract of ten acres. Excepting out of the land described in said deed from James W. Bennett and wife to Charles L. Holman and James D. Holman, a tract of one acre, conveyed by said James W. Bennett and wife to William H. Holman, by deed dated April twenty-third, A. D. Eighteen hundred and eighty-seven, and recorded in the Ocean County Clerk's office in Book 151 of Deeds, pages 368, etc. Also excepting and reserving out of the above mentioned James W. Bennett tracts and the Wesley B. White tracts, mentioned as aforesaid, a tract of fifteen and seventy-three one-hundredths acres, conveyed by Charles L. Holman and wife and James D. Holman and wife to David B. Chambers, by deed

dated October eighth, Eighteen hundred and ninety, and recorded in the Ocean County Clerk's office in Book 176 of Deeds, pages 35, etc., with reference thereto for a more full description.

FIFTH: Being the Hendrickson farm and consisting of three tracts of land, one containing eighteen acres, a tract fifty-seven and ninety-two one-hundredths acres, and a tract of six and fifteen one-hundredths acres, and being three of the tracts of land conveyed by Samuel T. Hendrickson and wife and James H. Hendrickson and wife to Charles L. Holman and James D. Holman, by deed dated the first day of July, Eighteen hundred and ninety, and recorded in the Ocean County Clerk's office in Book 172 of Deeds, pages 362, etc., with reference thereto for a more full description.

SIXTH: Being a tract of five acres in the Township of Jackson, County of Ocean and State of New Jersey, and being the same tract that was conveyed by David S. Holman and Clementine Holman, his wife, to Charles L. Holman, by deed bearing date the twenty-fifth day of May, A D. Eighteen hundred and eighty-seven, and recorded in the Ocean County Clerk's office in Book 154 of Deeds, pages 33, etc., with reference thereto for a more full description.

SEVENTH: Being a tract of four and nine hundred ninety-one one-thousandths acres, situated in the Township, County and State last aforesaid, and being the same tract conveyed by John E. Chambers and Sarah E., his wife, to Charles L. Holman, by deed dated April nineteenth, A. D. Eighteen hundred and eighty-seven, and recorded in the Ocean County Clerk's office in Book 151 of Deeds, pages 346, etc., with reference thereto for a more full description.

EIGHTH: Being the same land and premises conveyed by John E. North and Janett, his wife, and John H. Tyler and Fannie H., his wife, to James D. Holman and Charles L. Holman, by deed dated May fifteenth, A. D. Eighteen hundred and eighty-five, and recorded in the said Clerk's office in Book 136 of Deeds, pages 267, etc., consisting of a tract of fourteen and forty-six one-hundredths acres, and tract of forty-two one-hundredths acres, situated in the Township of Jackson, in the County of Ocean and State of New Jersey.

NINTH: Being the same property that was conveyed to the said Charles L. Holman by the Freehold Mutual Loan Association, by deed dated September eight, A. D. Eighteen hundred and ninety-one, and recorded in the aforesaid Clerk's office, and therein described as situated about one-third of a mile northerly from Wesley B. White's house. Beginning at a point five chains and thirty-one links on a course north four degrees east, as the needle pointed in Eighteen hundred and fifty-three, from the southeast corner of a tract of thirty-three and seventy-four one-hundredths acres from D. R. Gowdy and wife to Wesley B. White, by deed dated July twelfth, Eighteen hundred and sixty-nine; thence (1) north four degrees east ten chains and sixty-four links; thence (2) north eighty-six degrees west nine chains and forty links; thence (3) south four degrees west ten chains and sixty-four links; thence (4) south eighty-six degrees east nine chains and forty links to the Beginning. Containing ten acres.

TENTH: Being the same two tracts of land that were conveyed to the said Charles L. Holman and Frank T. Holman by David S. Holman

and wife, by deed dated September twenty-second, A. D. Eighteen hundred and ninety, and recorded in the aforesaid Clerk's office in Book 147 of Deeds, pages 407, etc. The first tract being known as "Number twelve," and containing forty-six acres and fourteen one-hundredths acres, more or less; the second tract also known as "Number five" of Cedar Swamp, and containing two and twenty-seven one-hundredths acres, more or less. Excepting and reserving out of the first above described tract a tract containing two and twenty-seven one-hundredths acres, and conveyed by said Thomas J. White to Reuben White, by deed dated October 4th, 1873, and recorded in the Clerk's office of Ocean County in Book 74 of Deeds, pages 273, etc.

Excepting and reserving out of the first above described tract a tract containing two acres, more or less. Being the same tract which was conveyed to Edward P. White by David S. Holman and wife, by deed dated January twelfth, Eighteen hundred and eighty-eight, and recorded in the Ocean County Clerk's office in Book 159 of Deeds, pages 129, etc. Excepting out of the last two described lots containing forty-six and fourteen one-hundredths acres and two and twenty-seven one-hundredths acres, respectively. A tract of land containing six and twenty-six one-hundredths acres conveyed by said Charles L. Holman and wife and Frank T. Holman to George H. White, by deed dated February eleventh, Eighteen hundred and ninety-one, and recorded in the Ocean County Clerk's office at Toms River, New Jersey.

ELEVENTH: Being the E. P. White property and composed of four tracts of land described as follows:

First Tract.—Containing two and twenty-seven one-hundredths acres and being the same tract which was conveyed to the same Edward P. White by David S. Holman and wife, by deed dated February eighth, Eighteen hundred and eighty-two, and recorded in the Ocean County Clerk's office in Book 115 of Deeds, page 16, etc.

Second Tract.—Containing two acres. Being the same tract which was conveyed to the said Edward P. White by David S. Holman and wife, by deed dated January twelfth, Eighteen hundred and eighty-eight, and recorded in the Ocean County Clerk's office in Book 159 of Deeds, pages 129, etc., with reference thereto for a more full description.

Third Tract.—Containing one and ninety-six one-hundredths acres, and being the same tract conveyed to Ross C. Browning by Joseph E. White and wife and William E. P. White and wife, by deed dated May thirty-first, Eighteen hundred and ninety-four, and recorded in Book 206 of Deeds for Ocean County, New Jersey, pages 446, etc., with reference thereto for a more full description.

Fourth Tract.—Containing one and eighty-three one-hundredths acres. Being the same premises conveyed to James D. White (now deceased) by Welsey P. White and wife, by deed dated the thirteenth day of May, Eighteen hundred and seventy-four and recorded in the Ocean County Clerk's office in Book 96 of Deeds, pages 408, etc. And the said William E. P. White claims title to the above described premises by virtue of the last will and Testament of his father, the said James D. White, deceased, recorded in the Surrogate's office of Ocean County

in Book 4 of Wills, page 167, etc., and being the same premises conveyed by William E. P. White and wife to Ross C. Browning, by deed dated June eighth, Eighteen hundred and ninety-four, and recorded in the Clerk's office of the County of Ocean, State of New Jersey, on the twenty-third day of June, Eighteen hundred and ninety-four, in Book 207 of Deeds, pages 389-390.

The aforesaid mentioned Edward P. White and wife and the aforesaid mentioned E. P. White and wife are the same persons and should be so considered as one and the same in the transfer of property.

TWELFTH: Being the same tract or parcel of land and premises conveyed by Joseph R. DeBow and Robbins DeBow, executors of Thomas DeBow, deceased, to Charles L. Holman and James D. Holman, by deed dated June nineteenth, Eighteen hundred and ninety-four, and recorded in the Ocean County Clerk's office in Book 152 of Deeds, pages 163, etc. Containing one hundred eleven and forty-seven one-hundredths acres situate in the Township of Jackson, in the County of Ocean and State of New Jersey.

THIRTEENTH: Being a tract of one hundred and eighty-nine one-hundredths acres situated in the Township of Jackson, in the County of Ocean and State of New Jersey. Being the same conveyed by Harry Hankins and wife to Charles L. Holman and James D. Holman, by deed bearing date the tenth day of January, Eighteen hundred and ninety-two, recorded in the Ocean County Clerk's office in Book 177 of Deeds, pages 198, etc., with reference thereto for a more full description.

FOURTEENTH: All those two certain tracts or

parcels of land hereafter described, being two tracts or parcels of land and premises conveyed by the Bridesburgh Land and Improvement Company to Charles L. Holman and James D. Holman, by deed dated the first day of February, A. D. Eighteen hundred and eighty-eight, recorded in the Ocean County Clerk's office in Book 156 of Deeds, pages 277, etc., consisting of a tract of one hundred thirty-nine and thirty-eight one-hundredths acres, and a tract of six hundred ninety-three and seven one-hundredths acres more or less. Excepting out of the above tracts a tract of two hundred twenty-one and seventy-nine one-hundredths acres returned December twenty-third, Eighteen hundred, and recorded at Perth Amboy in Book S. 13, page 12.

FIFTEENTH: All those two certain tracts or parcels of land situated in the Township of Jackson, in the County of Ocean and State of New Jersey, described as follows:

First Tract.—Being the premises conveyed to Charles L. Holman by two separate deeds, one from Sarah J. Irons dated November eleventh, Eighteen hundred and eighty-four and recorded in the Ocean County Clerk's office in Book 133 of Deeds, pages 340, etc., and the other from James D. Holman dated March twenty-second, Eighteen hundred and eighty-nine, and recorded in said Clerk's office in Book 163 of Deeds, pages 95, etc., and containing thirty-three and seventy-four one hundredths acres more or less.

Second Tract.—Containing thirty-three and seventy-four one-hundredths acres, and being the fourth tract of land described in a deed from Samuel T. Hendrickson and wife and James H. Hendrickson and wife to Charles L. Holman and

James D. Holman, by deed bearing date the first day of July, Eighteen hundred and ninety, and recorded in the Ocean County Clerk's Book 172 of Deeds, pages 362, etc.

Excepting out of the last above described lot or tract of land a lot of five acres conveyed by Joseph A. Brown and wife to John G. White, by deed dated December ninth, Eighteen hundred and seventy-one, and recorded in the Ocean County Clerk's office in Book 83 of Deeds, pages 98, etc.

SIXTEENTH: Being the "Grover Bogg." Containing eleven and twenty-four one-hundredths acres, situate in the Township, in the County of Ocean and State of New Jersey, and being the same property conveyed by Elmirah H. Merriman to Charles L. Holman and James D. Holman, by deed bearing date the thirtieth day of August, A. D. Eighteen hundred and ninety, and recorded in the Ocean County Clerk's office in Book 177 of Deeds, pages 55, etc., which deed conveys an undivided fourth part thereof, and being the same property of which the undivided three-fourths part thereof was conveyed to Charles L. Holman and James D. Holman, by deed from Joseph Grover and John S. Hubbard James Grover, deceased, etc., dated December fifth, Eighteen hundred and ninety, and duly recorded in the Ocean County Clerk's office at Toms River, New Jersey.

Together with all and singular the tenements, hereditaments and appurtenances, reversions, remainders, rents, issues and profits thereof, and also all the estate, right, title, interest dower and right of dower, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part there-

in. To have and to hold the said granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own use, benefit and behoof forever; Provided always, that if the said party of the first part thereto, his heirs, executors or administrators, should well and truly pay or cause to be paid unto the said William Hogancamp, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond, with interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted should cease, determine and be void.

AND YOUR ORATORS FURTHER SHOW, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged before R. C. Love, Esquire, Commissioner of Deeds of New Jersey, by said Henry M. Denton and Melicent S. Denton, his wife, on the fourth day of September, Nineteen hundred, and duly recorded in the office of the Clerk of the County of Ocean on the twenty-second day of August, A. D. Nineteen hundred and one, in Book 75 of Mortgages for said County, page 15, etc. as by the several certificates, endorsed on said indenture of mortgage, more fully appears.

AND YOUR ORATORS FURTHER SHOW, that afterwards, to-wit, on or about the eighth day of January, A. D. Nineteen hundred and two, the said Henry M. Denton and Milicent, his wife, conveyed to one Robert L. Shaw, by deed bearing date the day and year last aforesaid, all the land and premises hereinbefore described, and covered by the lien of your orator's mortgage. Except-

ing however, tracts numbered seven (7), eight (8) and nine (9) respectively, which said tracts are hereinbefore particularly mentioned and described, which said deed of conveyance was recorded on the eighth day of January, A. D. Nineteen hundred and two, in the Clerk's office of the County of Ocean, in Liber 266, page 147 of Deeds for said County, as by reference thereto will more fully appear, and by virtue of which conveyance the said Robert L. Shaw claims to have some interest in the said premises, but your orator expressly charges that the said conveyance was made subsequent to and with full knowledge of your orator's said mortgage.

And Your Orators Further Show that afterwards, to-wit, on the twenty-second day of March, A. D. Nineteen hundred and six, in consideration of the sum of Twelve thousand Dollars, ($12.000.), the said William Hogancamp, by deed of assignment bearing date the day and year last aforesaid, granted, bargained, sold, assigned, transferred and set over, and by the aforesaid presents did grant, bargain, sell, assign, transfer and set over unto Dwight S. Harding the aforesaid mentioned mortgage, together with the bond or obligation therein described, and the money due and to grow due thereon, with interest, To Have And To Hold the same unto the said Dwight S. Harding, his heirs, executors, administrators or assigns, for his and their use forever, and did covenant, promise and agree to and with said Dwight S. Harding that there was due and owing on the aforesaid bond and mortgage the sum of Twelve thousand Dollars ($12.000.), besides accrued interest thereon, which said assignment of mortgage was recorded in the office of the Clerk of the County of Ocean

on the third day of April, A. D. Nineteen hundred and six, in Book 12 of Assignments of Mortgages for said County, on pages 170, etc. as by reference thereto will more fully appear..

And Your Orators Further Show, that afterwards, to-wit, on or about the tenth day of April, A. D. Nineteen hundred and six, the said Dwight S. Harding, in consideration of the sum of Twelve thousand Dollars ($12,000.), by deed of Assignment bearing date the day and year last aforesaid, granted, bargained, sold, assigned, transferred and set over, and by the aforesaid deed of assignment did grant, bargain, sell, assign, transfer and set over unto Robert S. Hudspeth, Trustee, the aforesaid mentioned mortgage, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, To Have And To Hold the same unto the said Robert S. Hudspeth, Trustee, his heirs and assigns, for his and their use forever.

Subject Only to the proviso in said indenture of mortgage mentioned, and did then and there agree to and with the said Robert S. Hudspeth, trustee, that there was due and owing on the aforesaid bond and mortgage, the sum of Twelve Thousand Dollars, which said assignment of mortgage was recorded in the office of the Clerk of Ocean County, in Book 12 of Mortgages, pages, 172, etc.

And Your Orators Further Show that at the time said bond and mortgage was given, it was given to the said William Hogancamp, to secure the Second National Bank of Jersey City, for moneys advanced by the Second National Bank of Jersey City, to said Henry M. Denton and Milicent S. Denton at the time said mort-

gage was made, executed and delivered, and your orator, Robert S. Hudspeth, holds said bond and mortgage as trustee, for your orator, the Second National Bank of Jersey City, and there is due and owing upon said bond and mortgage the full principal sum thereon with large arrears of interest to your orator, Robert S. Hudspeth, Trustee, for your orator, the Second National Bank of Jersey City.

AND YOUR ORATORS FURTHER SHOW that the said Henry M. Denton is a married man, and his wife's name is Milicent S. Denton, and that said Milicent S. Denton may claim some interest, lien or estate in said lands and premises by virtue of her right of dower.

AND YOUR ORATORS FURTHER SHOW that any such right of dower is subject to the lien of and operation of your orator's mortgage.

AND YOUR ORATORS FURTHER SHOW that the said Robert L. Shaw may claim some interest, lien and estate in said lands and premises, but that such interest, if any, is subject to the lien and operation of your orator's mortgage.

AND YOUR ORATORS FURTHER SHOW that said Henry M. Denton has been adjudicated a bankrupt under the laws of the United States, but that no trustee, to your orator's knowledge, has been appointed, but your orators show that they have been given leave by the United States District Court to prosecute this suit.

AND YOUR ORATORS FURTHER SHOW that they have been greatly delayed and disappointed in the receipt of said money by the said Robert S. Hudspeth, Trustee, by means of which said premises, the said deed of mortgage and the estates thereby mortgaged as aforesaid, have become ab-

solute in your orator, as trustee, his heirs, executors, administrators or assigns for the use and benefit of the Second National Bank of Jersey City, and that said Henry M. Denton, Milicent S. Denton and Robert L. Shaw, since the execution of said Mortgage have possessed and enjoyed, and still do possess and enjoy the said mortgaged premises with the appurtenances; that they have always received, and still do receive the rents, issues and profits thereof.

And Your Orators Further Show and expressly charge the said mortgaged premises are a slender and scanty security for the payment of the principal and interest moneys so due to your orator, Robert S. Hudspeth, trustee as aforesaid, and that your orator, Robert S. Hudspeth, trustee, or some other person or persons for him, have frequently and in a friendly manner applied to the said Henry M. Denton, Milicent S. Denton and Robert L. Shaw, and requested them to pay and discharge said principal and interest moneys so due to your orator, Robert S. Hudspeth, trustee, on the said bond or obligation, and deed of mortgage hereinabove mentioned and set forth. And your orator well hoped that they would have complied with such reasonable request of your orator and would have paid to him said principal and interest moneys so as aforesaid due to your orator on said bond or obligation, and deed of mortgage, as in equity and good conscience they ought to have done.

In Tender Consideration whereof and forasmuch as your orators have not a complete and safe remedy in the premises, of and by the strict rules of the Common Law, nor can foreclose the equity of redemption of the said mortgaged

premises, or safely sell the same for the payment and satisfaction of said principal and interest moneys, so as aforesaid due to your orator, Robert S. Hudspeth, trustee, on said bond or obligation, and deed of mortgage, without the aid and decree of this Honorable Court.

To The End Therefore that the said Henry M. Denton and Milicent S. Denton, his wife, and Robert L. Shaw may, but without oath, true, full and perfect answer make to all and singular the premises, as fully and particularly, as if the same were here again repeated, and they thereunto particularly interrogated, according to the best of their knowledge, information, remembrance and belief, and that the said defendants may be decreed to pay to your orator, Robert S. Hudspeth, trustee, the said principal sum so due to your orator on such bond or obligation, and deed of mortgage, hereinabove mentioned and set forth, and all the interest moneys now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day to be appointed by this Honorable Court, and that the said defendants, and all persons claiming or to claim under them or any of them, may be foreclosed of and from all equity of redemption, or claim of, in or to the said mortgaged premises, and every part and parcel thereof with the appurtenances, and may deliver unto your orator, all deeds, demises and writings whatsoever, relating to or concerning the same, or that all and singular the said mortgaged premises with the appurtenances, may, by an order and decree of this Honorable Court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of moneys so due to him, on

said bond or obligation, and deed of mortgage, aforesaid, and all the interest now due or to grow due thereon, together with all your orator's costs and charges in this behalf sustained, and that your orator may have such other and further relief in the premises as to your Honor may seem meet and as shall be agreeable to equity and good conscience.

MAY IT PLEASE YOUR HONOR the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Henry M. Denton, Milicent S. Denton, his wife, and Robert L. Shaw, therein and thereby commanding them on a certain day and under a certain penalty, to be therein expressed, to be and appear before your Honorable Court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

AND YOUR ORATORS as in duty bond, will ever pray.

HUDSPETH & LANE,
Solrs. Complainants.

MERRITT LANE,
Of Counsel.

Answer of Henry M. Denton and Millicent S. Denton.

The joint and several answer of Henry M. Denton and Millicent S. Denton, his wife, two of the defendants to the bill of complaint of Robert S. Hudspeth, Trustee, and the Second National Bank of Jersey City, Complainants.

These defendants deny that on the first day of September, nineteen hundred, or at any other time since that date, the defendant Henry M. Denton was indebted to William Hogencamp in the sum of twelve thousand dollars; and they deny that on said date the said defendant Henry M. Denton, in order to secure the payment of said sum with interest, made and executed, under his hand and seal, and delivered to said William Hogencamp the bond in said bill of complaint mentioned; and they deny that these defendants, for the purpose of further securing the payment of said sum with interest, made and executed, under their hands and seals, and delivered to said William Hogencamp, the indenture of mortgage in said bill of complaint mentioned.

These defendants, further answering, admit that they executed and delivered to the defendant Robert L. Shaw the deed in said bill of complaint set out, conveying to him the lands and premises in said deed described.

These defendants, further answering, say that they have been informed that said William Hogencamp assigned a bond and mortgage to Dwight S. Harding, as in said bill of complaint alleged, and that said Dwight S. Harding executed an instrument purporting to assign the bond and mortgage last above mentioned to Robert S. Hudspeth, Trustee, as in said bill alleged.

Answer of Henry and Millicent Denton.

These defendants, further answering, deny that said bond and mortgage was given to said William Hogencamp to secure said Second National Bank of Jersey City for moneys advanced by said Bank to these defendants or to either of them, at the time said mortgage was made and executed, or at any other time; and these defendants deny that said complainant Hudspeth holds said bond and mortgage as Trustee for said Second National Bank of Jersey City, and they deny that there is due and owing upon said bond and mortgage the full principal sum thereon, with interest, or that any sum whatever is due thereon for either principal or interest, to said Robert S. Hudspeth, Trustee, or to said Second National Bank of Jersey City, or to both.

These defendants deny that the lands and premises described in said bill of complaint are subject to the lien or operation of the mortgage therein set forth.

These defendants further deny that the said Hudspeth or the said Harding, or the said Hogencamp, or the said Second National Bank, ever applied to these defendants or either of them, to pay the said mortgage or any part thereof, or the interest thereon or any part of it. These defendants allege that they have not, nor has either of them, ever been asked to pay any interest whatever on said mortgage, and they have not, nor has either of them, ever paid interest thereon.

These defendants, further answering, say that in the year nineteen hundred and subsequent thereto, said Hogencamp and said Henry M. Denton were close friends, said Hogencamp being then the President of said Second National Bank of Jersey City; that said Henry M. Denton, at

Hogencamp's request, to assist Hogencamp in borrowing money, went through the form of a purchase from said Hogencamp, of one hundred shares of the stock of said Second National Bank; that sometime in August, nineteen hundred and one, said pretended sale was consummated by the transfer of said one hundred shares of stock of said Bank from said Hogencamp to said Denton and the delivery by said Denton to said Hogencamp of two mortgages, one being a mortgage on land in Jersey City, made by one Hanford to said Denton, dated January sixteenth, eighteen hundred and ninety-five, for twelve thousand dollars, and the other being a bond and mortgage for twelve thousand dollars on property at Lakewood in the State of New Jersey, made by said Denton to said Hogencamp, and being the mortgage mentioned and set forth in the bill of complaint in this cause; that said two mortgages, amounting together to twenty-four thousand dollars, were the alleged purchase price of said stock; that this price was much more than its value, and more than the stock could have been sold for in the open market; that there was really no sale of the said stock from Hogencamp to Denton, but that the pretended sale was a mere colorable transaction in which Hogencamp never really parted with the stock, and was never really entitled to any consideration as upon a sale or purchase; that, in pursuance of said arrangement, after the stock was so placed in the name of said Denton, said Denton borrowed money on it from the Commercial Trust Company of Jersey City in his own name, but the amount so borrowed was immediately delivered to said Hogencamp; that thereafter the loan by the Commercial Trust Company was paid by money furnished by said Hogencamp,

and a larger amount was borrowed from the Hudson Trust Company of Hoboken, in the same way, all the proceeds of said loan going to said Hogencamp; that the note to the Hudson Trust Company was thereafter paid by money provided by said Hogencamp, and taken there by said Denton. That at the time the money was so borrowed, the said one hundred shares of stock of the Second National Bank were deposited as security for the loans, the said stock being endorsed in blank by said Denton. That when said loans so made by the Hudson Trust Company were paid, the stock so endorsed was delivered by said Trust Company to said Denton and by him immediately delivered to said Hogencamp. That said Hogencamp always collected the dividends which were regularly declared on said stock of the Second National Bank, and that thereafter said Hogencamp sold said stock and kept for himself all the proceeds of said sale.

These defendants, further answering, say that the said defendant Henry M. Denton was not indebted to said Second National Bank of Jersey City, or to said William Hogencamp, either individually or as trustee of said Bank, either at the date of said bond and mortgage, or at the date of the delivery thereof, or at the date of the conveyance of said mortgaged premises to the defendant Robert L. Shaw, or at the date of the assignment of said mortgage to said Dwight S. Harding, or at the date of the alleged assignment thereof to said Robert S. Hudspeth, Trustee; and that if anything was ever due on said mortgage, to said Bank or to any person representing it as Trustee, the full amount thereof has been paid, and these defendants are entitled to have said mortgage cancelled and surrendered.

And these defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, further answering said bill of complaint, say,

That on or about the .....day of October, in the year one thousand nine hundred and six, Leonard Richards, of the City of Jersey City, Hudson County, New Jersey, exhibited his bill of complaint in this honorable Court against the defendant Robert L. Shaw, therein stating that on the twenty-seventh day of August, nineteen hundred and two, the defendant Robert L. Shaw, being indebted to one William Hogencamp in the sum of thirteen thousand dollars, by his bond dated on that day became bound to said William Hogencamp in the sum of twenty-six thousand dollars lawful money of the State aforesaid, conditioned for the payment by said defendant Robert L. Shaw, his heirs, executors and administrators or any of them, to the said William Hogencamp, his certain attorneys, executors, administrators or assigns, of the just and full sum of thirteen thousand dollars as aforesaid, payable on demand then next ensuing the date thereof, with lawful interest for the same, without any fraud or delay, and that said defendant Robert L. Shaw, being seized in fee, or some other good and sufficient estate, in and to said lots of land in said bill described and set forth, in order to secure the payment of the said sum of thirteen thousand dollars and interest that might accrue thereon to said Hogencamp, by mortgage bearing date the twenty-seventh day of August, A. D. nineteen hundred and two, as well in consideration of the said debt of thirteen thousand dollars

as for the better securing the payment thereof, with interest, unto the said Hogencamp, his executors, administrators or assigns, did give, grant, bargain, sell, alien, enfeoff and convey unto the said Hogencamp certain therein described lots or parcels of land, situated, lying and being in Jersey City, County of Hudson and State of New Jersey.

That afterwards, on the twenty-second day of May, A. D. nineteen hundred and six, said Hogencamp assigned and transferred, for a valuable consideration, said bond and mortgage to Dwight S. Harding, and that afterwards, on the tenth day of April, nineteen hundred and six, said Harding duly assigned said bond and mortgage unto Robert S. Hudspeth, Trustee, and that afterwards, on the twenty-second day of September, nineteen hundred and six, Robert S. Hudspeth, Trustee, duly assigned said bond and mortgage to Leonard Richards, the complainant; to which said bill said defendant Robert L. Shaw put in his answer, which, among other things, set up and alleged that said Hogencamp had asked Henry M. Denton (one of the defendants in this suit) to assist him, said Hogencamp, in borrowing money by the form of a purchase from said Hogencamp, of one hundred shares of Second National Bank Stock; that thereupon the pretended sale was consummated by the transfer of said stock from Hogencamp to said Denton, and the delivery by said Denton to said Hogencamp of two mortgages, one being the mortgage called the Hanford Mortgage in said answer set forth, being a mortgage to secure twelve thousand dollars ($12,000) upon premises in Jersey City, and the other being a bond and mortgage for twelve thousand dollars ($12,000) on property at Lakewood in the State

of New Jersey, the two mortgages together amounting to twenty-four thousand dollars, being the alleged purchase price of said stock. That the stock having been placed in the name of said Denton, money was borrowed from the Commercial Trust Company of Jersey City, in the name of said Denton, but the amount borrowed was immediately delivered to said Hogencamp; that thereafter the loan by the Commercial Trust Company was paid, and a larger amount borrowed from the Hudson Trust Company of Hoboken, in the same way, all the proceeds going to said Hogencamp; that the note to the Hudson Trust Company was paid by a check of said Hogencamp, taken there by said Denton. That, at the time the money was borrowed, the said one hundred shares of stock of the Second National Bank were deposited as collateral security for the loans, being endorsed in blank by said Denton; that when the loans of the Hudson Trust Company were paid by said Hogencamp, the said Denton gave the said stock so endorsed to said Hogencamp. That said Hogencamp always collected the dividends which were regularly declared on said stock of the Second National Bank, and that the said Hogencamp sold said stock and kept the proceeds thereof.

These defendants further say that the Lakewood mortgage mentioned in the answer of said defendant Robert L. Shaw to said bill of complaint of said Richards, was the same, identical mortgage set out in the bill of complaint herein, and by said bill of complaint sought to be foreclosed. That the said suit of Richards against the defendant Robert L. Shaw, afterwards and on or about the fourteenth day of May, nineteen hundred and seven, came on for trial before Hon-

orable Lindley M. Garrison, Vice Chancellor, and after testimony had been taken therein, the said Vice Chancellor, on application of the complainant therein, adjourned the case and permitted the complainant to amend the said bill of complaint; that thereafter and on or about the third day of June, nineteen hundred and seven, the said complainant filed his amended bill of complaint in which he set up, among other things, that the defendant Robert L. Shaw was, on the twenty-seventh day of August, nineteen hundred and two, indebted to said Second National Bank in the sum of thirteen thousand dollars, and that on that date he signed and delivered to William Hogencamp, Trustee and President of said Bank, a promissory note for thirteen thousand dollars, payable on demand to the order of said defendant Robert L. Shaw, at the Second National Bank of Jersey City, with interest, the same being for value received; that the said note was thereupon endorsed by said defendant Robert L. Shaw and made payable to said Hogencamp or order, which said note was thereupon endorsed without recourse by said Hogencamp, and that said defendant Robert L. Shaw, in order to secure the payment of said sum of thirteen thousand dollars mentioned in and according to the tenor of said note, and the interest that might accrue thereon, to the said William Hogencamp, as Trustee, his successors or assigns, did execute and deliver a mortgage bearing date the twenty-seventh day of August, nineteen hundred and two, a description of which is set forth in the original bill and also in the amended bill of complaint; and that after the execution of the said indenture of mortgage, the same was assigned by several assignments to the persons named in the original bill of com-

plaint, and that no part of the said thirteen thousand dollars or interest thereon had been paid, and that the said note and mortgage were executed and delivered by said Shaw to Hogencamp as Trustee, in trust for the Second National Bank of Jersey City, and, by reason of the various assignments of said mortgage in said bill set forth, the Second National Bank of Jersey City had become divested of its interest therein, and that the same was then vested in the complainant, and praying that the said Robert L. Shaw and the Second National Bank of Jersey City (who, he alleges, was the *cestui que trustent* in said mortgage) might answer said bill of complaint.

That thereafter the said defendant Robert L. Shaw filed his further answer to said amended bill of complaint, wherein, among other things, he denied that on or about the twenty-seventh day of August, nineteen hundred and two, or at any other time, he was indebted to the Second National Bank of Jersey City in the sum of thirteen thousand dollars, or any other sum. And in his said answer the said defendant Robert L. Shaw, among other things, alleged that in the Fall of nineteen hundred and one, being desirous of repairing the stable erected on the premises described in the bill of complaint in that suit, he was informed by said Henry M. Denton that said Hogencamp had agreed to loan one thousand dollars toward the repair of said stable, and that said defendant Robert L. Shaw might overdraw his bank account in the Second National Bank, as he needed for that purpose, not to exceed one thousand dollars.

That thereupon and between November thirteenth, nineteen hundred and one, and January fourteenth, nineteen hundred and two, said de-

fendant Robert L. Shaw drew various checks upon said Bank, the dates and amounts of which are set forth in said answer; that on or about January thirtieth, nineteen hundred and two, the account of said defendant Robert L. Shaw with said Bank was increased by a deposit of nine hundred dollars, which said defendant Robert L. Shaw understood and then, and at the time of filing his said answer, believed, was made by said Hogencamp in accordance with the statement made by said Denton to said defendant Robert L. Shaw in the Fall of nineteen hundred and one, that said Hogencamp had agreed to loan said defendant Robert L. Shaw one thousand dollars for the purpose above mentioned; that said defendant Robert L. Shaw had never received any further sum from said Hogencamp, or from said Bank, than said sum of one thousand dollars.

And in said answer said defendant Robert L. Shaw further alleged that the complainant, having refused to receive the amount actually due on said mortgage with interest and costs, said defendant Robert L. Shaw, on the fourth day of December, nineteen hundred and six, deposited with the Court of Chancery, in said suit and for the benefit of the complainant, the sum of one thousand two hundred and seventy-three dollars and ninety-three cents in full payment of all moneys secured by said mortgage, and that on the eleventh day of December, nineteen hundred and six, he served a written notice of said deposit upon Hudspeth & Carey, the solicitors for said complainant Richards.

And in said answer said defendant Robert L. Shaw further alleged that he never had owed the

said Bank any sum of money on said bond and mortgage, exceeding the amount deposited by him with the Clerk in Chancery in said suit, as in said answer set forth, and that on the eleventh day of December, nineteen hundred and six, the time he deposited the said sum with said clerk in said suit, for the benefit of the complainant, he did not owe on said mortgage any sum exceeding the sum so deposited by said defendant Robert L. Shaw.

These defendants, further answering, say, that said Second National Bank of Jersey City, being a party defendant to said bill of complaint, filed its answer thereto, wherein, among other things, it admitted the charges of the complainant therein, that said defendant Robert L. Shaw, on the twenty-seventh day of August, nineteen hundred and two, executed and delivered to said Hogencamp, then President of said Bank, as Trustee for said Bank, the promissory note described in said amended bill, for the sum of thirteen thousand dollars, and that said defendant Robert L. Shaw, in order to secure the payment of said sum mentioned in said note and according to the tenor thereof and the interest that might accrue thereon to said Hogencamp, as Trustee for said Bank, executed the deed or indenture of mortgage dated August twenty-seventh, nineteen hundred and two, in manner and form as set forth and alleged in said amended bill of complaint, and by said deed of mortgage said defendant Robert L. Shaw mortgaged the land and premises in said bill of complaint described.

Said Bank, further answering said amended bill of complaint, alleged that it was true, as stated in said bill of complaint, that on or about the twenty-sixth day of March, nineteen hundred and

six, the said Hogencamp, then President of said Bank, and acting as Trustee for said Bank, and by its order and direction, did, for a valuable consideration, then and there paid to said Bank, sell, assign, transfer and set over to said Dwight S. Harding said mortgage, by deed of assignment bearing date on the day and year last above set forth, together with the note aforesaid, in manner and form as is alleged in said amended bill of complaint.

And in its said answer to said amended bill of complaint, said Bank further alleged that it was true that said Dwight S. Harding, on the tenth day of April, nineteen hundred and six, for a valuable consideration, assigned and transferred unto Robert S. Hudspeth, as Trustee for said Bank, said indenture of mortgage, together with the note belonging thereto and the moneys due and to grow due thereon, and that on the twenty-second day of September, nineteen hundred and six, said Hudspeth, as Trustee for said Bank, and by its order and direction, did by deed of assignment sell, assign, transfer and set over to said Richards, the complainant in said suit, said indenture of mortgage with said note as aforesaid, and the moneys due and to grow due thereon, in manner and form as charged in said amended bill of complaint.

And said Bank, by its said answer, did further allege that it was true as charged and set forth in said bill of complaint, that the said deed of mortgage and the estate thereby mortgaged had become absolute in said complainant, and that said note and mortgage were executed and delivered by said complainant to the said William Hogencamp, as Trustee, in trust for said Bank,

and that it was true, as charged in said bill of complaint, that by reason of the various assignments of said mortgage as in the answer of the Bank thereinbefore set forth, said Bank, who was the *cestui que trustent* in said mortgage, had become divested of its interest therein, and that the same was then vested in said complainant.

These defendants, further answering, say that issue having been joined on said answers, said suit again came on for trial before Honorable Lindley M. Garrison, Vice Chancellor, on the sixth day of May, nineteen hundred and eight, and thereupon said complainant submitted his evidence to the court in support of his said bill and amended bill of complaint, and the said defendant Robert L. Shaw submitted his evidence in support of his said answer and further answer. And the same having been considered by the Court, and counsel for said complainant and said defendant Robert L. Shaw having been heard, said Vice Chancellor found and determined from all the facts, that the transaction between said Denton and Hogencamp, in the said answers of said defendant Robert L. Shaw set forth, was not a sale of said one hundred shares of stock; that said Hogencamp still had said stock and had never sold it, and that whatever said Denton did with respect to said stock, was for said Hogencamp's benefit, and that the notes given by the said defendant Robert L .Shaw (or by said Denton, if said Denton gave the original notes and said defendant Robert L. Shaw subsequently substituted his own therefor) were, as between said defendant Robert L. Shaw and said Hogencamp, without consideration.

That upon said findings of said Vice Chancellor

and on or about the twenty-eighth day of September, nineteen hundred and eight, by the final decree of this Court, it was adjudged and decreed that the said defendant Robert L. Shaw, by his aforesaid deposit with the Clerk of this Court, had redeemed the mortgage mentioned and described in the bill of complaint of said Richards, and by said final decree it was, among other things, ordered and adjudged that said Richards should forthwith reassign said mortgaged premises to said defendant Robert L. Shaw, free from all incumbrances by said Richards done, and that he should deliver to said defendant Robert L. Shaw the note and mortgage in his said bill of complaint mentioned, and also the deeds and writings in his custody or under his control, relating to the said mortgaged premises. And said decree having been duly enrolled, still remain of record in this Court, having in nowise been changed, appealed from or reversed.

These defendants, further answering, say that the bond and mortgage in the complainant's bill in said this set out, is the same bond and mortgage which was given by said defendant Henry M. Denton to said Hogencamp as part of the alleged consideration for the one hundred shares of stock of the Second National Bank, so transferred to him for an alleged consideration of twenty-four thousand dollars, and that the assignment from said Denton to Hogencamp, of the said Hanford mortgage for twelve thousand dollars on the premises in Jersey City, was the remainder of the twenty-four thousand dollars, alleged consideration for said stock; and that the note for thirteen thousand dollars and the mortgage given to secure the same, on the premises in Jersey City—to foreclose which mortgage

the bill of complaint and the amended bill of complaint of Leonard Richards against the said defendant Robert L. Shaw and the Second National Bank, hereinbefore in this answer set forth, were filed—were given for the said Hanford mortgage or in substitution therefor, and for securing an additional sum of one thousand dollars. And these defendants insist that in said suit the Court of Chancery found as a fact that the alleged sale of stock was entirely fictitious and done entirely for the benefit of Hogencamp, and that the title to said stock did not pass from Hogencamp to said defendant Denton; and that the title to neither the said mortgage on the Lakewood property, nor the said Hanford mortgage, passed from said defendant Denton to said Hogencamp; and that there was no consideration passing from said Hogencamp to said Denton for either the said mortgage on the Lakewood property or the said assignment. And these defendants allege and insist that by reason of the proceedings, findings and adjudication in said suit of said Richards, these complainants are barred from maintaining this suit for the foreclosure of the mortgage in their bill of complaint herein set forth. And these defendants pray that they may have the same benefit of this defence as if the same had been set up by plea.

All which things these defendants are ready to aver, maintain and prove as this honorable Court may direct; and they pray that they may be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

VREDENBURGH, WALL & CAREY,
Solicitors for said Defendants.

Answer of Robert L. Shaw.

The answer of Robert L. Shaw, one of the defendants, to the bill of complaint of Robert S. Hudspeth, Trustee, and the Second National Bank of Jersey City, complainants.

This defendant denies that on the first day of September, 1900, or at any other time since that date, Henry M. Denton was indebted to William Hogencamp in the sum of twelve thousand dollars; and denies that on said date said Henry M. Denton, in order to secure the payment of said sum, with interest, made and executed under his hand and seal, and delivered to said William Hogencamp the bond and indenture of mortgage in said bill of complaint mentioned.

This defendant, further answering, admits that said Henry M. Denton, with Millicent Denton his wife, executed and delivered to this defendant the deed in said bill of complaint set out, conveying to him the lands and premises therein described.

This defendant, further answering, says that he has been informed that said William Hogencamp assigned a bond and mortgage to Dwight S. Harding, as in said bill of complaint alleged, and that said Dwight S. Harding executed an instrument purporting to assign the bond and mortgage last above mentioned to Robert S. Hudspeth, Trustee, as in said bill alleged.

This defendant, further answering, denies that said bond and mortgage was given to said William Hogencamp to secure the Second National Bank of Jersey City for moneys advanced by said Bank to said Henry M. Denton and Millicent S. Denton, or either of them, at the time said mortgage was made and executed, or at any other time; and this defendant denies that said Robert S. Huds-

peth holds said bond ond mortgage as Trustee for said Second National Bank of Jersey City, and he denies that there is due and owing upon said bond and mortgage the full principal sum thereon with interest, or that any sum whatever is due thereon for either principal or interest, to said Robert S. Hudspeth, Trustee, or to said Second National Bank of Jersey City, or to both.

This defendant admits that he owns in fee the lands and premises so conveyed to him, but he denies that said lands and premises are subject to the lien or operation of said mortgage.

This defendant further denies that the said Hudspeth or the said Harding, or the said Hogencamp, or the said Second National Bank ever applied to this defendant to pay the said mortgage or any part of it, or the interest thereon, or any part of it. This defendant alleges that he has never been asked to pay, and has never paid, any interest whatever on said mortgage.

This defendant, further answering, says that said Hogencamp and said Denton were close friends in the year nineteen hundred—said Hogencamp being then President of the Second National Bank of Jersey City; that said Denton, at Hogencamp's request, to assist Hogencamp in borrowing money, went through the form of a purchase from said Hogencamp, of one hundred shares of the Second National Bank Stock; that sometime in August, nineteen hundred and one, this pretended sale was consummated by the transfer of the one hundred shares of stock of the Second National Bank, from said Hogencamp to said Denton, and the delivery by said Denton to Hogencamp, of two mortgages, one being a

mortgage on land in Jersey City, made by one Hanford to said Denton, dated the 16th day of January, 1895, for twelve thousand dollars, and the other being a bond and mortgage for twelve thousand dollars on property at Lakewood in the State of New Jersey, made by said Denton to said Hogencamp, and being the mortgage mentioned and set forth in the bill of complaint in this cause. That the two mortgages, amounting together to twenty-four thousand dollars, were the alleged purchase price of said stock; that this price was more than its value and more than the stock could have been sold for in the open market; and that there was really no sale of the said stock from Hogencamp to Denton, but that the pretended sale was a mere colorable transaction in which Hogencamp never really parted with the stock and was never really entitled to any consideration as upon a sale or purchase. That, in pursuance of the arrangement, after the stock was so placed in the name of said Denton, said Denton borrowed money on it from the Commercial Trust Company of Jersey City, in his own name, but the amount so borrowed was immediately delivered to said Hogencamp. That thereafter the loan by the Commercial Trust Company was paid by money furnished by said Hogencamp, and a larger amount was borrowed from the Hudson Trust Company of Hoboken, in the same way—all the proceeds of said loan going to said Hogencamp. That the note to the Hudson Trust Company was thereafter paid by money provided by said Hogencamp and taken there by said Denton. That at the time the money was so borrowed, the said one hundred shares of stock of the Second National Bank were deposited as security for the loans, the

said stock being endorsed in blank by said Denton. That when said loans made by the Hudson Trust Company were paid, the stock so endorsed was delivered by said Trust Company to said Denton and by him immediately delivered to said Hogencamp. That said Hogencamp always collected the dividends which were regularly declared on said stock of the Second National Bank, and that thereafter said Hogencamp sold said stock and kept for himself all the proceeds of said sale.

This defendant, further answering, says that said Henry M. Denton was not indebted to said Second National Bank of Jersey City, or to said William Hogencamp, either individually or as trustee of said Bank, either at the date of said bond and mortgage, or at the date of the delivery thereof, or at the date of the conveyance of said mortgaged premises to this defendant, or at the date of the assignment of said mortgage to said Dwight S. Harding, or at the date of the alleged assignment thereof to said Robert S. Hudspeth, Trustee; and that if anything was ever due on said mortgage, to said Bank or to any person representing it as Trustee, the full amount thereof has been paid, and this defendant is entitled to have said mortgage cancelled and surrendered.

And this defendant, by protestation, not confessing or acknowledging the matter and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, further answering said bill of complaint, says,

That on or about the ..... day of October, in the year one thousand nine hundred

and six, Leonard Richards, of the City of Jersey City, Hudson County, New Jersey, exhibited his bill of complaint in this Honorable Court against this defendant, therein stating that on the twenty-seventh day of August, nineteen hundred and two, this defendant, being indebted to one William Hogencamp in the sum of thirteen thousand dollars, by his bond dated on that day became bound to said William Hogencamp in the sum of twenty-six thousand dollars lawful money of the State aforesaid, conditioned for the payment by this defendant, his heirs, executors and administrators or any of them, to the said William Hogencamp, his certain attorneys, executors, administrators or assigns, of the just and full sum of thirteen thousand dollars as aforesaid, payable on demand then next ensuing the date thereof, with lawful interest for the same, without any fraud or delay, and that this defendant, being seized in fee, or some other good and sufficient estate, in and to said lots of land in said bill described and set forth, in order to secure the payment of the said sum of thirteen thousand dollars and interest that might accrue thereon to said Hogencamp, by mortgage bearing date the twenty-seventh day of August, A. D. nineteen hundred and two, as well in consideration of the said debt of thirteen thousand dollars as for the better securing the payment thereof, with interest unto the said Hogencamp, his executors, administrators, or assigns, did give, grant, bargain, sell, alien, enfeoff and convey unto the said Hogencamp certain therein described lots or parcels of land, situated, lying and being in Jersey City, County of Hudson and State of New Jersey.

That afterwards, on the twenty-second day of May, A. D. 1906, said Hogencamp assigned and

transferred for a valuable consideration said bond and mortgage to Dwight S. Harding, and that afterwards on the tenth day of April, nineteen hundred and six, said Harding duly assigned said bond and mortgage unto said Robert S. Hudspeth, Trustee, and that afterwards, on the twenty-second day of September, nineteen hundred and six, Robert S. Hudspeth, Trustee, duly assigned said bond and mortgage to Leonard Richards, the complainant; to which said bill this defendant put in his answer, which, among other things, set up and alleged that said Hogencamp had asked Henry M. Denton, one of the other defendants herein, to assist him, said Hogencamp, in borrowing the money by the form of a purchase from said Hogencamp, of one hundred shares of Second National Bank Stock; that thereupon the pretended sale was consummated by the transfer of said stock from said Hogencamp to said Denton, and the delivery by said Denton to said Hogencamp of two mortgages, one being the mortgage called the Hanford Mortgage in said answer set forth, being a mortgage to secure twelve thousand ($12,000) dollars upon premises in Jersey City, and the other being a bond and mortgage for twelve thousand ($12,000) dollars on property at Lakewood in the State of New Jersey, the two mortgages together amounting to twenty-four thousand dollars, being the alleged purchase price of said stock. That the stock having been placed in the name of said Denton, money was borrowed from the Commercial Trust Company of Jersey City, in the name of said Denton, but the amount borrowed was immediately delivered to said Hogencamp; that thereafter the loan by the Commercial Trust Company was paid, and a larger amount borrowed

from the Hudson Trust Company of Hoboken, in the same way, all the proceeds going to said Hogencamp; that the note to the Hudson Trust Company was paid by a check of said Hogencamp, taken there by said Denton. That, at the time the money was borrowed, the said one hundred shares of stock of the Second National Bank were deposited as collateral security for the loans, being endorsed in blank by said Denton; that when the loans of the Hudson Trust Company were paid by said Hogencamp, the said Denton gave the said stock so endorsed to said Hogencamp. That said Hogencamp always collected the dividends which were regularly declared on said stock of the Second National Bank, and that said Hogencamp sold said stock and kept the proceeds thereof.

This defendant further says that the Lakewood mortgage mentioned in this defendant's said answer to said bill of complaint, of said Richards, was the same, identical mortgage set out in the bill of complaint herein, and by this bill of complaint sought to be foreclosed. That the said suit of Richards against this defendant afterwards and on or about the fourteenth day of May, nineteen hundred and seven, came on for trial before Honorable Lindley M. Garrison, Vice Chancellor, and after testimony had been taken therein, the said Vice Chancellor, on application of the complainant therein, adjourned the case and permitted the complainant to amend the said bill of complaint; that thereafter and on or about the third day of June, nineteen hundred and seven, the said complainant filed his amended bill of complaint in which he set up, among other things, that this defendant was, on the twenty-seventh day of August, nineteen hundred and two, in-

debted to said Second National Bank in the sum of thirteen thousand dollars, and that on that date he signed and delivered to William Hogencamp, Trustee and President of said Bank, a promissory note for thirteen thousand dollars, payable on demand to the order of this defendant at the Second National Bank of Jersey City, with interest, the same being for value received; that the said note was thereupon endorsed by this defendant and made payable to said Hogencamp or order, which said note was thereupon endorsed without recourse by said Hogencamp, and that this defendant, in order to secure the payment of said sum of thirteen thousand dollars mentioned in and according to the tenor of said note, and the interest that might accrue thereon, to the said William Hogencamp, as Trustee, his successors or assigns, did execute and deliver a mortgage bearing date the twenty-seventh day of August, nineteen hundred and two, a description of which is set forth in the original bill and also in the amended bill of complaint; and that after the execution of the said indenture of mortgage, the same was assigned by several assignments to the persons named in the original bill of complaint, and alleged that no part of the said thirteen thousand dollars or interest thereon had been paid, and that the said note and mortgage were executed and delivered by said Shaw to Hogencamp as Trustee, in trust for the Second National Bank of Jersey City, and, by reason of the various assignments of said mortgage in said bill set forth, the Second National Bank of Jersey City had become divested of its interest therein, and that the same was then vested in the complainant, and praying that the said Robert L. Shaw and the Second National Bank of Jersey

City (who, he alleges, was the *cestui que trustent* in said mortgage) might answer said bill of complaint.

That thereafter this defendant filed his further answer to said amended bill of complaint, wherein, among other things, he denied that on or about the twenty-seventh day of August, nineteen hundred and two, or at any other time, he was indebted to the Second National Bank of Jersey City in the sum of thirteen thousand dollars, or any other sum. And in his said answer this defendant, among other things, alleged that in the Fall of nineteen hundred and one, being desirous of repairing the stable erected on the premises described in the bill of complaint in that suit, he was informed by the said Henry M. Denton that said Hogencamp had agreed to loan one thousand dollars toward the repair of said stable, and that this defendant might overdraw his bank account in the Second National Bank, as he needed for that purpose, not to exceed one thousand dollars.

That thereupon and between November thirteenth, nineteen hundred and one, and January fourteenth, nineteen hundred and two, this defendant drew various checks upon said Bank, the dates and amounts of which are set forth in said answer; that on or about January thirtieth, nineteen hundred and two, the account of this defendant with said Bank was increased by a deposit of nine hundred dollars, which this defendant understood and then, and at the time of filing said answer, believed, was made by said Hogencamp in accordance with the statement made by Denton to this defendant in the Fall of nineteen hundred and one, that said Hogencamp had agreed to loan this defendant one thousand dollars

for the purpose above mentioned; that this defendant had never received any further sum from said Hogencamp, or from said Bank, than said sum of one thousand dollars.

And in said answer this defendant further alleged that the complainant, having refused to receive the amount actually due on said mortgage with interest and costs, this defendant, on the fourth day of December, nineteen hundred and six, deposited with the Court of Chancery, in said suit and for the benefit of the complainant, the sum of one thousand two hundred and seventy-three dollars and ninety-three cents in full payment of all moneys secured by said mortgage, and that on the eleventh day of December, nineteen hundred and six, he served written notice of said deposit upon Hudspeth & Carey, the solicitors for said complainant Richards.

And in said answer this defendant further alleged that he never had owed the said bank any sum of money on said bond and mortgage, exceeding the amount deposited by him with the Clerk in Chancery in said suit, as in said answer set forth, and that on the eleventh day of December, nineteen hundred and six, the time he deposited the said sum with said Clerk in said suit, for the benefit of the complainant, he did not owe on said mortgage any sum exceeding the sum so deposited by this defendant.

This defendant further says that said Second National Bank of Jersey City, being a party defendant to said bill of complaint, filed its answer thereto, wherein, among other things, it admitted the charges of the complainant therein, that this defendant on the twenty-seventh day of August, nineteen hundred and two, executed and delivered

to said Hogencamp, then President of said Bank, as Trustee, for said Bank, the promissory note described in said amended bill, for the sum of thirteen thousand dollars, and that this defendant, in order to secure the payment of said sum mentioned in said note and according to the tenor thereof and the interest that might accrue thereon to said Hogencamp, as Trustee for said Bank, executed the deed or indenture of mortgage dated August twenty-seventh, nineteen hundred and two, in manner and form as set forth and alleged in said amended bill of complaint, and by said deed of mortgage this defendant mortgaged the lands and premises in said bill of complaint described.

Said Bank, further amending said amended bill of complaint, alleged that it was true, as stated in said bill of complaint, that on or about the twenty-sixth day of March, nineteen hundred and six, the said Hogencamp, then President of said Bank, and acting as Trustee for said Bank, and by its order and direction, did, for a valuable consideration, then and there paid to said Bank, sell, assign, transfer and set over to said Dwight S. Harding said mortgage, by deed of assignment bearing date on the day and year last above set forth, together with the note as aforesaid, in manner and form as is alleged in said amended bill of complaint.

And in its said answer to said amended bill of complaint said Bank further alleged that it was true that said Dwight S. Harding, on the tenth day of April, nineteen hundred and six, for a valuable consideration, assigned and transferred unto Robert S. Hudspeth, as Trustee for said Bank, said indenture of mortgage, together with

the note belonging thereto and the moneys due and to grow due thereon, and that on the twenty-second day of September, nineteen hundred and six, said Hudspeth, as Trustee for said Bank, and by its order and direction, did, by deed of assignment, sell, assign, transfer and set over to said Richards, the complainant in this suit, said indenture of mortgage with said note as aforesaid, and the moneys due and to grow due thereon, in manner and form as charged in said amended bill of complaint.

And this Bank, by its said answer, did further allege that it was true as charged and set forth in said bill of complaint, that the said deed of mortgage and the estate thereby mortgaged had become absolute in said complainant, and that said note and mortgage were executed and delivered by said complainant to the said William Hogencamp as Trustee, in trust for said Bank, and that it was true as charged in said bill of complaint, that by reason of the various assignments of said mortgage as in the answer of the Bank thereinbefore set forth, said Bank, who was the *cestui que trustent* in said mortgage, had become divested of its interest therein, and that the same was then vested in said complainant.

This defendant further says that issue having been joined on said answers, said suit again came on for trial before Honorable Lindley M. Garrison, Vice Chancellor, on the sixth day of May, nineteen hundred and eight, and thereupon said complainant submitted his evidence to the court in support of his said bill and amended bill of complaint, and this defendant submitted his evidence in support of his said answer and further answer. And the same having been considered by the Court, and counsel for said complainant and

this defendant having been heard, said Vice Chancellor found and determined from all the facts, that the transaction between said Denton and Hogencamp, in this defendant's said answers set forth, was not a sale of said one hundred shares of stock; that said Hogencamp still had said stock and had never sold it, and that whatever said Denton did with respect to said stock, was for said Hogencamp's benefit, and that the notes given by this defendant (or by said Denton, if said Denton gave the original notes and this defendant subsequently substituted his own therefor) were, as between this defendant and said Hogencamp, without consideration.

That upon said findings of said Vice Chancellor and on or about the twenty-eighth day of September, nineteen hundred and eight, by the final decree of this Court, it was adjudged and decreed that this defendant, by his aforesaid deposit with the Clerk of this Court, had redeemed the mortgage mentioned and described in the bill of complaint of said Richards, and by said final decree it was, among other things, ordered and adjudged that said Richards should forthwith reassign said mortgaged premises to this defendant, free from all incumbrances by said Richards done, and that he should deliver to this defendant the note and mortgage in his said bill of complaint mentioned, and also the deeds and writings in his custody or under his control, relating to the said mortgaged premises. And said decree having been duly enrolled, still remains of record in this Court, having in nowise been changed, appealed from or reversed.

This defendant, further answering, says that the bond and mortgage in the complainant's bill in

this suit set out, is the same bond and mortgage which was given by said Denton to said Hogencamp as part of the alleged consideration for the one hundred shares of stock of the Second National Bank, so transferred to him for an alleged consideration of twenty-four thousand dollars, and that the assignment from Denton to Hogencamp, of the said Hanford mortgage for twelve thousand dollars on the premises in Jersey City, was the remainder of the twenty-four thousand dollars, alleged consideration for said stock; and that the note for thirteen thousand dollars and the mortgage given to secure the same, on the premises in Jersey City, to foreclose which mortgage the bill of complaint and the amended bill of complaint of Leonard Richards against this defendant and the Second National Bank, hereinbefore in this answer set forth, were filed—were given for the said Hanford mortgage or in substitution thereof, and for securing an additional sum of one thousand dollars. And this defendant insists that in said suit the Court of Chancery found as a fact that the alleged sale of stock was entirely fictitious and done entirely for the benefit of Hogencamp, and that the title to said stock did not pass from Hogencamp to said Denton; and that the title to neither the said mortgage on the Lakewood property, nor the said Hanford mortgage passed from said Denton to said Hogencamp; and that there was no consideration passing from said Hogencamp to said Denton for either the said mortgage on the Lakewood property or the said assignment. And this defendant alleges and insists that by reason of the proceedings, findings and adjudication in said suit of said Richards, these complainants are barred from maintaining this suit for the foreclosure of the mortgage in their bill of com-

plaint herein set forth. And this defendant prays that he may have the same benefit of this defence as if the same had been set up by plea.

All which things this defendant is ready to aver, maintain and prove as this honorable Court may direct; and he prays that he may be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

VREDENBURGH, WALL & CAREY,
Solicitors for said Defendant.

Ordinary replications filed.

Memorandum.

MR. LANE,
For the Complainants.

MESSRS. VREDENBURGH, WALL & CAREY,
For the Defendants.

GARRISON, V. C.:

This is an action by Robert S. Hudspeth, Trustee, and The Second National Bank of Jersey City for which he is alleged to be trustee, against Henry M. Denton and his wife, Robert L. Shaw and William Hogencamp. It is a suit to foreclose a mortgage upon lands at Lakewood, New Jersey. The bond and mortgage in suit were executed by Denton (and wife) on the 1st day of September 1900, the bond being payable on demand and being for Twelve thousand dollars, the obligee and mortgagee being William Hogencamp.

Since it is conceded that this is not the ordinary case of an advance of money by the mortgagee to the mortgagor, it became necessary for the complainants to allege and prove facts which en-

titled them to enforce the payment of the bond and mortgage in suit.

Very briefly stated, they allege that the bond and mortgage in suit were pledged with the Second National Bank to secure the payment to it of an indebtedness of Robert L. Shaw and that such indebtedness has never been paid, and that therefore they, the complainants, are entitled to enforce this collateral security to that debt.

Unfortunately the circumstances are such that the Court cannot make a concise finding of fact, but must, at some length, state the reasons which lead to the conclusions reached.

Henry M. Denton, one of the defendants, prior to the year 1900 and thereafter, was engaged in building operations in the City of New York. These operations were upon a much larger scale than the amount of capital possessed by him warranted. He interested William Hogencamp, who was and for many years prior to the year 1900 had been President of the Second National Bank of Jersey City. All the proofs in the case concerning the Bank's method of doing business lead to the conclusion that Hogencamp practically did as he pleased in managing the Bank. From the year 1900 down through all of the period that is material in this case the dealings and relationships between Hogencamp, Denton and the Bank are so numerous, intricate and confused that it is impossible for the parties themselves (and of course more so for the Court or any third person) to define and explain them.

Beginning with the year 1900, Denton began receiving large sums of money through Hogencamp. Denton knew the Bank in those transactions only inferentially or secondarily. He dealt solely with Hogencamp; and while it is

undoubtedly the fact that in most instances Denton's notes were discounted by or loaned upon by the Bank, in others money was furnished by Hogencamp's borrowing from the Bank and advancing the money to Denton.

Just what interest Hogencamp had at the commencement of the relationships between him and Denton in those large real estate operations of Denton it is impossible to determine. After a while all proceeds thereof went to Hogencamp Denton retaining therefrom only $25.00 a week for his personal living expenses.

On the 2nd of April, 1900, Denton, by a payment of something over fifty seven thousand dollars, discharged all of his indebtedness to the Second National Bank then due. Mr. Hogencamp at this time had in his physical possession the deed by which Denton had acquired title to the Lakewood property (subsequently mortgaged) and also a mortgage made by one Hanford to Denton for $12,000 secured upon the "Rink Stable property" in Jersey City. This last-named mortgage was upon an undivided one-half interest in said property which Hanford had owned.

It hardly seems possible that these papers could have been in Hogencamp's possession for any other purpose than safe-keeping, although the parties may have thought that some equitable rights could be created in Hogencamp by his having physical possession of these papers. I should not refer to the matter were it not that in the testimony these papers were often adverted to.

On the 23rd day of April, 1900, Denton gave to William Hogencamp two promissory notes, each for $12,000, at three months each, drawn by Denton either to his own order or to Hogencamp's order. The testimony of the only two

witnesses who are shown to have any knowledge concerning this transaction is absolutely contradictory each of the other. Hogencamp testifies that Denton was desirous of becoming a stockholder in the Second National Bank; that Hogencamp had large amounts of the stock of that Bank; that upon the date in question he sold 100 shares of his stock at a valuation of $240. per share to Denton for the gross sum of $24,000 and that Denton thereupon and therefore gave to him, Hogencamp, in payment for the stock, his two promissory notes of $12,000 each.

Hogencamp further testifies that upon that date he physically handed over to Denton the 100 shares of stock in question, and that Denton physically handed the same back to Hogencamp to be held by him as collateral for the payment of the notes just mentioned. He further testifies that Denton then agreed to assign to him, Hogencamp, the Hanford mortgage upon the Rink Stable property in Jersey City, and also to make a mortgage upon the Lakewood property to Hogencamp, which two securities could then be held by Hogencamp as further collateral for the payment of the notes just mentioned.

Denton testifies that upon the date in question Hogencamp told him that he, Hogencamp, was unable to use the stock which he owned in the Second National Bank as collateral for loans obtained from that Bank, and that if Denton would allow Hogencamp to apparently sell to him 100 shares of the stock of the Second National Bank for the apparent consideration of $24,000, and should give his notes to Hogencamp for that sum, and would give to Hogencamp as security for the payment of the notes the Hanford mortgage upon his Lakewood property, Hogencamp would be able thereby to obtain money

upon all of these securities—that is, through Denton's using the stock as collateral to Denton's notes elsewhere, money could be obtained therefrom, while Hogencamp could use Denton's notes with the mortgages as security in the Second National Bank, and in this way money could be obtained on loans on all of these securities as collateral.

Denton absolutely denies that any stock of the Bank was then shown him, let alone passed to him and passed back by him to Hogencamp.

Since it will be necessary, in the more or less chronological statement which I purpose making, to refer, in their proper order, to other facts bearing upon this matter, I shall not dilate thereon at this point.

On the same day on which Hogencamp procured from Denton the two $12,000 promissory notes above referred to, Denton, through Hogencamp, secured $16,000 from the Second National Bank upon a note. On the 23rd day of July, 1900, (which it will be observed is just three months after the date of the Denton notes) Robert L. Shaw, who is the brother-in-law of Denton, and who previously had been engaged in the livery stable business with Denton, and who was a depositor in the Second National Bank, gave to William Hogencamp his note, payable on demand, for the sum of $24,000. It is conceded by everyone in the case that Shaw obtained no money whatever upon this note, and no benefit whatever from having given it, and that it was solely, to the knowledge of both Hogencamp and Denton, an accommodation by Shaw.

Hogencamp says that at the time in question Denton's affairs with the Second National Bank were in such condition that he could not use Den-

ton's two $12,000 notes to borrow money on from that Bank, and that therefore he requested Denton to obtain, in substitution of his two $12,000 notes, a note from Shaw for $24,000 upon which Hogencamp would be able to borrow. This is not seriously disputed by Denton. Shaw does not appear at all, and Denton does not have any clear recollection of what happened at the time the Shaw note of $24,000 was given to Hogencamp but, as before stated, it is unquestioned that Hogencamp got it from Shaw without consideration and solely because of the relations between Denton and Hogencamp, and to be used for their benefit or the benefit of one of them.

On the 23rd day of July, 1900, Hogencamp procured the Second National Bank to loan on the Shaw $24,000 note the sum of $24,000. He says that upon that date he, Hogencamp, was responsible to the Bank upon notes of one Littell for the sum of $25,056.25, and that with the money procured upon the Shaw note and $1,056.25 of other money which he furnished, he paid off to the Bank the Littell notes.

Hogencamp further says that at the time of procuring the loan from the Bank upon the Shaw note he gave to the Bank as collateral thereto the 100 shares of stock of the Second National Bank which he says he had sold to Denton on the 23rd of April, 1900, and which he says Denton left with him as collateral for the payment of the purchase price to him. This alleged transfer of collateral was entirely a mental operation, there not being any physical thing done with respect thereto, the stock remaining as before in the possession of Hogencamp.

He also says that the mortgage on Denton's Lakewood property and the Hanford mortgage,

which was owned by Denton, were also to be held by him as collateral to the Shaw note. It will be recalled that the mortgage on the Lakewood property was not yet in existence, and that the Hanford mortgage, which ran to Denton, had not yet been assigned to Hogencamp.

On the 1st of September, 1900, Denton made to Hogencamp the mortgage on the Lakewood property for $12,000. (This is the mortgage in suit). And also he made a written assignment upon that date to Hogencamp of the Hanford mortgage.

On the 12th day of August, 1901, Hogencamp transferred on the books of the Second National Bank three certificates of stock to Henry M. Denton, 347-A for 40 shares, 348-A for 50 shares, and 349-A for 10 shares.

Just before this time Denton was being very severely pressed by a New York lawyer named McKelvey, who represented the New York & Batavia Wood Working Company, a judgment creditor in New York of Denton's. Application was made to Hogencamp to advance to Denton the two thousand odd dollars which McKelvey then demanded as consideration for refraining from pressing Denton upon the balance of the judgment at that time. Hogencamp was not in a position to respond with cash at that time but offered to loan Denton 50 shares of stock in the Second National Bank which Denton could use to raise money upon to satisfy McKelvey.

On the fifteenth day of August, 1901, Hogencamp gave to Denton and his New York lawyer O'Callaghan Certificate No. 348-A for 50 shares. It will be observed that this is one of the certificates which were issued to Denton under the transfer from Hogencamp on the 12th of August, 1901. Denton took the certificate for 50 shares and

his note for $6,000 to McKelvey, who had the same discounted at the Chase National Bank, and retained the amount then agreed to be paid to him, namely two thousand and odd dollars, gave to Denton the balance, some three thousand and odd dollars, which was brought back by Denton to Hogencamp, and was by Hogencamp deposited in an account in the Second National Bank which he carried under the title of William Hogencamp, Trustee.

At the same time Hogencamp demanded and received from Denton a mortgage for $7500 upon a property which Denton owned in New York, which mortgage the testimony shows was by Hogencamp subsequently assigned to some third person, and presumably he received a consideration equivalent to the amount of the mortgage. This mortgage the testimony shows was given to him to secure him for having loaned to Denton the 50 shares of stock of the Second National Bank.

On the twentieth day of August, 1901, Hogencamp wrote a letter upon the letter-head of the Second National Bank, addressed to himself as President, requesting him to deliver to Henry M. Denton the 100 shares of stock of the Second National Bank, and cause the same to be signed by Robert L. Shaw. On the 22nd day of August 1901, Hogencamp caused Denton's mortgage on the Lakewood property (the mortgage in suit) and the assignment of the Hanford mortgage to him to be recorded.

On the 23rd day of August, 1901, Hogencamp gave to Denton the two certificates heretofore adverted to, one for 40 and one for 10 shares, of stock of the Second National Bank, which Denton then took to the Commercial Trust Company in

Jersey City and pledged as collateral to Denton's note for $6,000, which $6,000 Denton brought back to Hogencamp who deposited it in the account heretofore referred to entitled "William Hogencamp, Trustee."

On the 16th day of November 1901, Hogencamp wrote two letters, one of which he signed himself and the other of which he caused Mr. Hasking, the Cashier of the Second National Bank to sign. Just before this time Denton's note in the Chase National Bank of New York, which he had given to McKelvey and with which the 50 shares of stock which Hogencamp gave to Denton on the 15th day of August, 1901 were pledged as collateral, became due and was unpaid, and McKelvey had taken the note and collateral out of the Bank. McKelvey was threatening to hold the stock to satisfy not only the $6,000 represented by the note with which it had been pledged as collateral, but also for a balance due upon the judgment against Denton which his client the Wood Working Company held.

At the date before mentioned, November 16, 1901, Hogencamp wrote the letters before mentioned, one of which was to Honeck, an officer of the Wood Working Company, and in that letter Hogencamp informed him that he had transferred 50 shares to Denton on August 12, 1901, by Certificate A-348, and that before that time Denton was not a stockholder in the Bank. In the other letter, which was addressed to McKelvey, the attorney for the Wood Working Company, Hogencamp tells him that he had loaned, on August 12th, 1901, 50 shares to Denton to borrow on, and that now Hogencamp has to redeem it. He also says in that letter that Denton never owned the stock, that it was "my" (Hogencamp's) "property."

Memorandum.

The subsequent happenings with respect to this matter were these: On May 1st, 1902, Denton drew his check on the Second National Bank to John J. McKelvey for $7,255, which was the amount necessary to satisfy McKelvey for the note, interest, &c., and to release the 50 shares of stock which he held; and on the same date Denton drew his check to the Commercial Trust Company for $6,067, which was the amount necessary to satisfy that institution for the note of Denton's that it held, for which he also held 50 shares of stock as collateral and Denton thereupon received from each of these parties the respective 50 shares which, on the next day, May 2nd, 1902, he took to the Hudson Trust Company in Hoboken and pledged to it for a loan of $13,500 which he thereupon procured upon his note, and this money was brought back and deposited in his account to make good the two checks just abovementioned, one to the Commercial Trust Company and one to McKelvey.

On the 24th day of July, 1902, Hogencamp procured the Second National Bank to loan $25,000 upon two notes of Robert L. Shaw, made to the order of himself and by him endorsed, one for $12,000 dated June 30th, 1902, and one for $13,000 dated July 23rd, or 24th, 1902. One thousand dollars of this was a personal matter of Shaw's and is not in any way involved in this suit. Shaw at this time gave a mortgage to Hogencamp upon the Ring Stable property beforementioned. He and Hanford had owned this property, and Hanford had mortgaged his undivided one-half to Denton, who had assigned the mortgage on September 1st, 1901, to Hogencamp. Shaw subsequently purchased the whole property, and this last-named mortgage of his for $13,000 to Hogencamp was upon the whole property.

Memorandum.

This mortgage was the subject matter of the suit of *Leonard Richards vs. Robert L. Shaw,* which is so often referred to in the trial of the suit at bar.

By checks which Hogencamp caused Shaw to sign $24,000 of the money advanced by the Bank on the $12,000 and $13,000 Shaw notes aforesaid was paid back to the Bank to take up the $24,000 note of Shaw theretofore loaned on by the Bank, dated July 23, 1900. No explanation is made by anyone as to why these two Shaw notes bore different dates, the $12,000 one being dated June 30, 1902, and the $13,000 one being dated July 23, or 24, 1902.

In the latter part of the year 1904 the Bank Examiners of the United States Government were busied with the affairs of the Second National Bank. They objected to a large number of loans which appeared in the Demand Loan Account, and which, for one reason or another, Hogencamp the President of the Bank was charged with the responsibility for. Upon the demand of the Bank Examiners many of these items were taken out of the Demand Loan Account and were carried to an account called "Suspended Debt," for which account Hogencamp was by the Bank, in one way or another, held responsible. I cannot determine from the testimony whether the claim was that he was legally liable for all of these various items, or whether, by reason of his conduct as President of the Bank, he was charged with responsibility concerning them and in that way was looked to as responsible. However, this is really immaterial, because he seems to have assumed the responsibility concerning them.

On the 7th day of September, 1905, Hogencamp sold for something over $125,000 all of the stock

which he held in the Second National Bank, and incidentally he sold the 100 shares which he says belonged to Denton. On that date, September 7th, 1905, he paid to the credit of this Suspended Debt Account a large sum of money something over $38,000. He testifies that this was for other items than the Shaw indebtedness, and that after this payment he still was responsible to the Suspended Debt Account for $35,000, which he says was made up of the two Shaw notes aggregating $25,000 and $10,000 remaining due upon an indebtedness in that account of Pratt & Wellman.

With respect to the sale on the 7th of September, 1905, of the stock which Hogencamp testifies that he had sold to Denton, Hogencamp says that he sold this stock for $19,000: That from this sum (the $19,000) he deducted $10,000 which he had contributed to pay Denton's note at the Hudson Trust Company at the time that Denton's $13,000 note there was taken up, and some other items due him by Dentons, leaving a balance due Denton of $7,652.80, which he credited upon a demand note dated July 19th, 1901, made by Denton to Hogencamp for $13,000, with interest. Hogencamp admits that he did not communicate with Denton concerning the sale or the deposition of the proceeds, and that Denton had no knowledge concerning them. Hogencamp claims the right to thus deal with the stock because he asserts that when the loan was paid off at the Hudson Trust Company and the 100 shares was received by Denton, he, Hogencamp, had contributed the $10,000 just referred to to be used as part of that payment, and was handed the stock by Denton to he held by him as security for the repayment thereof.

The Bank continued to press Hogencamp to

take up and pay off the balance for which he was responsible of the Suspended Debt Account, which, as before stated, amounted to $35,000 and which Hogencamp says was made up of the two Shaw notes, aggregating $25,000 and an item of Pratt & Wellman amounting to $10,000.

For the purpose of complying with the Bank's demand in this respect Hogencamp arranged with Dwight S. Harding, a citizen of New York, to obtain the $35,000. His understanding with Mr. Harding was as follows: Hogencamp was to give his note for $35,000 to Mr. Harding and was to give to Harding as security that the note would be paid the following things: A mortgage upon Hogencamp's property at Deal, New Jersey, for $35,000; a mortgage upon Hogencamp's residence at Paterson, New Jersey, for $10,000; and after the $35,000 had been paid to the Bank and they had given up the two Shaw notes and the Shaw mortgage for $13,000 and the Denton Lakewood mortgage (the one in suit) for $12,000, all of those were to be pledged with Mr. Harding for the same purpose.

For some undisclosed reason the transaction with Harding fell through; but the undisputed testimony is (and the only testimony on the point) that the Bank (Hogencamp being no longer connected in any way with the Bank) offered to take Harding's place and do exactly what would have been done had Harding carried out the transaction and that this was done.

As a result, what then happened was that Hogencamp gave his note to the Bank for $35,000, and they gave credit to the Suspended Debt Account for $35,000. This was done on the 24th day of March, 1906. Since Hogencamp had already made the mortgages to Harding, they were by appro-

priate instruments assigned by Harding to the Bank or its Trustee, Hudspeth.

After this transaction, therefore, the situation was that the Bank held the obligation of Hogencamp for $35,000, and as security therefor they held a mortgage from Hogencamp to Harding, assigned to Hudspeth Trustee, for $35,000 on Hogencamp's Deal property, and a mortgage similarly made and assigned for $10,000 upon Hogencamp's Paterson property, and they also held the Shaw notes and the Shaw mortgage for $13,000 and the Denton $12,000 mortgage on the Lakewood property, the one in suit. The last-named securities were, of course, what can be termed a "re-pledge—that is to say, they were not put up by Hogencamp with the Bank at the time that he got the $35,000 credit which went to the Suspended Debt Account but were put up by him with the Bank after that period. In other words, the transaction was this: Hogencamp, being responsible to the Bank, or being held by the Bank to be responsible to it, for the $35,000 owed to the Suspended Debt Account, the items of which were the two Shaw notes of $12,000 and $13,000 aggregating $25,000, and the $10,000 balance of the Pratt & Wellman note, the Bank obtains from Hogencamp his note for $35,000 and credits the Suspended Debt Account with that sum on account of "Bills Discounted," the "Bills Discounted" unquestionably being the note for $35,000 just mentioned. The Bank received at that time as security for the payment of the $35,000 Hogencamp note the $35,000 Deal mortgage and the $10,000 Paterson mortgage. The $35,000 was credited to the Suspended Debt Account for the purpose of taking up and out of that account the remaining items therein for which Hogencamp was held responsible, namely, the Shaw notes ag-

gregating $25,000 and the Pratt & Wellman $10,000.

Afterwards Hogencamp repledged these notes and the collateral which had been held for their payment, namely, the Shaw mortgage and the Denton Mortgage on the Lakewood property, to the Bank as additional security.

It would be absolutely impossible, within the limits of any permissible expression of the Court's finding, to do more than advert generally to the great mass of testimony concerning the personal dealings between Denton, Hogencamp and the Bank from the year 1900, when we are first concerned with them, down to 1906, when they practically ceased. For a period of ten days witnesses have been giving evidence concerning these matters and the items are on hundreds of pages of books, checks, contracts and other instruments of proof.

Generally speaking, the following is a resume of the proofs: Beginning as early as 1900, some of the rents from Denton's New York property reached Hogencamp, and after a period beginning in 1901 all of the proceeds of Denton's New York property reached Hogencamp; and in addition to such proceeds, which consisted not only of rents but the products of sales of the property, Hogencamp had made to him numerous mortgages upon these properties, and in many instances received the moneys upon such mortgages. Down to December, 1912, Denton had a personal account in the Second National Bank. William Hogencamp throughout the entire time involved had a personal account; and, in addition thereto, had three accounts. "William Hogencamp, Trustee" began on the 14th day of November, 1901, and the last item is in August of 1902. Through

this account there passed something in excess of $68,000. "William Hogencamp, Attorney" began on the 20th of January, 1903, and the last item is January 4th, 1904. Through this account there passed more than $26,000. "William Hogencamp, Rent," began November 20th, 1903, and the last item is January 5th, 1906. Through this account there passed more than $126,000.

William Hogencamp, with the designation to determine out of which account it should be taken constantly drew checks against each of these three last-named accounts; and in many instances at a time when Denton had no personal account whatever in the Bank, he, Denton, drew checks upon the Second National Bank which Hogencamp caused to be cashed out of one or the other of these three accounts.

It is practically undisputed that, beginning about 1901, all Denton's real estate speculations in New York were carried on jointly by Hogencamp and Denton; whether there was to be any joint participation in profits and losses does not appear and does not have to be decided.

It does appear that Hogencamp personally participated in directing what should be done concerning these properties; to whom and for what price they should be sold, and that the purchase price coming to Denton after payment of encumbrances in each instance, passed to Hogencamp; and in addition there passed to Hogencamp the money represented in numerous mortgages upon the properties which Denton was acquiring and was selling in the City of New York. In addition to this, loans were made from the Bank to Hogencamp and the Denton, the proceeds of which were used in these New York operations; and beginning sometime, I think, in 1903,

Memorandum.

Denton took out of the proceeds of his New York speculations only twenty five dollars a week for living expenses, and all the balance went to Hogencamp, and Hogencamp seemed to have assumed the personal direction, if not responsibility, of finishing the uncompleted buildings then in process of erection upon Denton's property, and of selling the properties when completely constructed.

Hogencamp contends with respect to all of these transaction and to the entire course of dealings between him and Denton, that he passed through one of these three accounts, or through his own and Denton's account, all moneys which came to his hands in such a way that Denton got the benefit of them. He did not attempt to demonstrate this, and it only could be demonstrated after an accounting which would require a vast amount of time to take.

Denton is practically ignorant of the result of his dealings with Hogencamp and the Bank, and is not shown to have any records, books or the like which would enable him to determine how he stood. Hogencamp kept no books of any use, and it is only by the most laborious tracing of items through the Bank's books that any result can be reached concerning them.

If, in any aspect of the case, the right of the complainants to foreclose this mortgage depends upon a finding that Denton is indebted to Hogencamp, there will have to be a reference to a Master to take proofs as to the accounting and to report a conclusion as to the result of such proofs.

To avoid any such necessity as that last suggested the complainants put forward the first of their two theories:

Memorandum.

That theory may be fairly set forth as follows: Denton, on the 23rd of April, 1900, gave to Hogencamp his notes for $24,000. We may leave aside, in discussing this present theory, whether the transaction with respect to the stock upon that occasion was a bonafide sale, or was merely an illusory proceeding, because, on the 23rd of July, 1900, it is admitted that Shaw gave his note to Hogencamp for $24,000 as an accommodation to take the place of the two Denton notes aggregating $24,000 previously given. The Bank having loaned $24,000 on the Shaw note dated July 23rd, 1900, and the Denton mortgage having been agreed to be given as collateral for this indebtedness (although not actually executed until September 1st, 1900) was, when executed and delivered, held as collateral for this loan by the Bank on the Shaw note. The Bank still holds the Shaw note and the collateral, to wit, the mortgage in suit; and since the Shaw note has not been paid, the Bank has the right to foreclose the Denton mortgage which was held as collateral to it. I think this is a fair statement of the position taken by the counsel for the complainants with respect to this first theory.

So far as anyone can express himself with assurance in a case that is so involved as this one, I am prepared, in considering this theory, to accede to the conclusion if the premises upon which it is rested are correct in fact. I do not find, however, that the precedent factors exist to justify the conclusion. It must be recalled in the first instance that there is no documentary or other proof of any description, excepting Hogencamp's testimony, that the Denton mortgage of $12,000, dated September 1st, 1900, was to be held by the Bank or by anyone. At the

time that the mortgage was given by Denton, on the 1st of September, 1900, Shaw's note of $24,000 was in the Bank, having been loaned upon by the Bank on the 23rd day of July, 1900, the day of its date. At the same time that Denton gave the mortgage upon his Lakewood property he assigned to Hogencamp the $12,000 mortgage which had been made by Hanford to Denton upon the undivided interest of Hanford in the Rink Stable property in Jersey City. There is nothing on the books of the Bank nor elsewhere to show that these titles thus vested in Hogencamp (one to the mortgage on Denton's Lakewood property, and one to the mortgage which Denton had of Hanford's) were as collateral to any transactions whatever with the Bank, or, in fact, with Hogencamp. The books of the Bank with respect to other transactions do show mortgages that were held by the Bank and upon which money had been loaned—the money, presumably, of course, was loaned upon notes to which the mortgages were security.

Passing this question, however, and assuming in favor of the complainants that their contention is correct that these securities when created were intended to be, and, after being created, actually were held by the Bank as collateral to the Shaw notes, we next come to the transaction of July 24th, 1902, when the Shaw note of $24,000 was taken out of the Bank.

There is no testimony of any value, if there is any at all, which shows that at that time there was any agreement between the parties and the Bank that the mortgages of Hanford to Denton assigned to Hogencamp, and of Denton directly to Hogencamp (the latter on the Lakewood property) were to be collateral to the two notes

which Shaw then gave, one of $12,000 and one of $13,000. It may very well be argued on behalf of Denton that, assuming the previous point which has just been dealt with to be decided against him, and that the mortgage on his Lakewood property was given by him to Hogencamp in order that he might turn it over to the Bank as security for the $24,000 Shaw note of July 23rd, 1900, it does not at all follow that when that $24,000 note was taken up, as it was, and new notes were secured from Shaw, that the collateral which was obtained for the loan of July 23rd, 1900, should still be held for the new loans.

Passing this, in turn, and deciding, for the purpose of the further discussion of the point, that the result of the transaction of July 24th, 1902, when the Bank loaned $25,000 upon Shaw's notes of $12,000 and $13,000 respectively, was to vest them still with the Denton mortgage as security for the payment of those loans, there is no evidence that any agreement of the parties split up the collateral with respect to any part of the indebtedness that day arising; that is to say, on that day, July 24th, 1902, two notes of Shaw were loaned upon by the Bank. The item appears in the Bank's books as one transaction—that is, on that day, in the Demand Loan Account, the only place where the item appears, Shaw is charged with $25,000. This, the proofs show, was upon two notes of Shaw's, one dated June 30, 1902, and the other dated July 23 or 24, 1902; that the first note was for $12,000 and the latter for $13,000. There is not the slightest evidence to show that the parties then, or at any other time, agreed that the Denton mortgage of $12,000 upon the Lakewood

property was to be held as collateral for any part of this indebtedness. If the complainants obtain the benefit of all their debatable points so far considered, the utmost that they could claim would be that Denton's $12,000 mortgage was collateral for the entire indebtedness and not for any specific part of it.

This is important in one aspect, at least, of the case, because if the entire indebtedness were reduced, or if their other collateral, the right of the holder of the indebtedness against the owner of the collateral would be affected by those incidents—not to the extent of relieving the collateral holder from paying what might be due upon the entire indebtedness or having his collateral sold for that purpose, but because such circumstances would entitle the owner of the collateral to the use for his own benefit of whatever had been paid and whatever had been received by way of other collateral if and when he was called upon to pay the balance.

Assuming, however, that it is further decided in favor of the complainants that the circumstances just adverted to does not prevent them from asserting their right to foreclose the Denton mortgage in suit if they can establish the validity and non-payment of the Shaw note of $12,000, we next come to the most important and determinative feature:

Here, it should be recalled and firmly fixed in the memory, that it is admitted by all concerned that Shaw was an accommodation maker, and that his original $24,000 note and his two subsequent notes, of $12,000 and $13,000 respectively (leaving out of account $1,000 represented by the last two notes, with which we are not at all concerned in this case) were executed by

him solely to accommodate Denton and Hogencamp, and that as to each of the last two named persons no obligation arose by reason of the execution by Shaw of the notes in question; and no liability to those two persons arose as against Shaw by reason of the notes signed by Shaw. It is only when these notes, or any of them, passed into the hands of bonafide holders for value that Shaw can be held liable. Of course, if Shaw cannot be held liable upon his notes, or, in the particular case before this Court, on his $12,000 note to which the Denton mortgage is asserted to be collateral, then the collateral may not be utilized by the holder. That is to say, the only right which the complainants here can assert as against Denton must rest upon their right to assert a valid claim against Shaw upon his $12,000 note; they cannot foreclose the $12,000 mortgage upon the Denton Lakewood property unless they prove that the note of Shaw of $12,000, to which this mortgage was collateral, was valid and enforcible against Shaw.

In my view the proofs do not establish this last-mentioned contention. In my view the proofs show that on March 24th, 1906, Hogencamp paid off to the Second National Bank the Shaw notes and became vested with title to such notes and to the collateral which had been held by the Bank for their payment. It will be recalled that in the previous portion of this opinion I have briefly referred to the testimony of Hogencamp concerning the transaction with Harding and the Bank at the time that he got the loan of $35,000 from the Bank on March 24, 1906, which was credited to the Suspended Debt Account to take out of it the Shaw notes and the remaining $10,000 of the Pratt & Wellman note. Hogen-

camp's own oral testimony is to the effect that I have just referred to; and the entries in the books of the Bank and the other documentary proofs bear him out.

From all of this the following undisputed facts appear: In December of 1904 various items from "Demand Loans" were ordered to be taken therefrom and charged against an account entitled "Suspended Debt." All of these items were those which the Bank then held Hogencamp either personally or indirectly responsible for. Among these items were the Shaw notes, aggregating $25,000. One of such note, namely, the one dated June 30, 1902, is the note which the Bank loaned upon on the 24th day of July, 1902, and to which the Denton mortgage in suit is said by Hogencamp to have been collateral. Subsequently, and on the 7th of September, 1905, Hogencamp paid off on the Suspended Debt Account something over thirty-eight thousand dollars. In the trial of Richards vs. Shaw he testified, as is shown in the present suit, that by that payment then made he took up the Shaw notes, and, of course, the collateral that was deposited therewith, among which was the Denton mortgage in suit. In the present suit he denies the truthfulness of that testimony previously given, and asserts that he was mistaken. There is nothing from the books of the Bank by which it can be determined what particular items of the Suspended Debt Account were taken up and out of that account by the payment by Hogencamp on September 7, 1905 of the thirty-eight odd thousand dollars.

Assuming, however, in favor of the complainants, that they may have the benefit of Hogencamp's present testimony, which is in direct con-

tradiction of his testimony in the previous case, we next come to the transactions of March, 1906. According to Hogencamp, at that time he was being held responsible by the Bank for $35,000 balance due on the Suspended Debt Account. That $35,000, he says, was made up of the $25,000 of Shaw notes and the $10,000 balance of the Pratt & Wellman notes. At that time he arranged with Dwight S. Harding to obtain a loan from Mr. Harding of $35,000 for which he was to give Mr. Harding his note for that amount. He was to secure the payment of that note by a mortgage upon his Deal property for $35,000, a mortgage on his property for $10,000 and, after the Shaw notes were by the payment of the $35,000 taken out of the Suspended Debt Account and delivered by the Bank to Hogencamp he was to transfer those with their attendant collateral (among which it will be remembered is the Denton mortgage in suit) to Harding.

When Harding refused to advance the money the Bank undertook to take Harding's place and to do just what Harding had agreed to do. This is Hogencamp's own testimony concerning this transaction, and is uncontradicted and is borne out by what next happened. What next happened was the giving by Hogencamp to the Bank of his note for $35,000; the crediting of this note under the head of "Bills Discounted" to the Suspended Debt Account; the transfer to the Bank by Hogencamp, through Harding, of the $35,000 mortgage on the Hogencamp Deal property and the $10,000 mortgage on Hogencamp's property, and the leaving with the Bank by Hogencamp of the Shaw notes and the attendant collateral which his payment of $35,000 just mentioned had taken out of the Suspended Debt Account.

Memorandum.

It will be observed in analyzing this transaction that so soon as the Bank received Hogencamp's $35,000 note and passed the credit by Bills Discounted of $35,000 to the Suspended Debt Account, Hogencamp became thereby vested with title to the Shaw notes and the attendant collateral, among which was the Denton mortgage in question. By then leaving those with the Bank as additional collateral to his $35,000 note the situation just alluded to is not altered. At the instant of time when Hogencamp became vested with title to the Shaw notes and the Denton mortgage those notes and that mortgage were unenforcible in his hands. This, I do not think, can be seriously if at all disputed. As respects Hogencamp, Shaw was an accommodation maker of the note in question—that is, the $12,000 note. Denton's mortgage, Hogencamp says was collateral to this note. The only consideration which Hogencamp or anyone else can attribute to the Denton mortgage arises out of the Shaw note. The Shaw note, as against Shaw, and as a consideration for the Denton mortgage, can therefore only be good in the hands of an innocent third person who had advanced money thereon; when Hogencamp got back the title to the Shaw note for $12,000 and the attendant collateral the Denton mortgage he could not, of course, enforce any liability as against Shaw or any rights with respect to the mortgage that was collateral to the Shaw notes. If, when he so got them back, that was the fact, he could not, by leaving them with the Bank, create any greater right in the Bank than he had, because it will be observed that no new consideration moved from the Bank on the note in question, that is, the Shaw note. By the transactions upon that date,

March 24, 1906, which were designed, as Hogencamp says, to put a live asset in the Bank in place of the moribund Shaw asset, the Bank loaned money to Hogencamp upon his $35,000 note secured by his mortgages on his Deal and Paterson properties; and the only consideration which passed from the Bank to Hogencamp was the release to Hogencamp of these items out of the Suspended Debt Account. There was no other possible reason for the transaction of March, 24, 1906, than to take out of the Suspended Debt Account the $35,000 of balance which remained there.

If we were to attempt to follow the complainants in their argument made to review these apparent facts we are utterly unable to do so. The complainants attempt to waive aside all effect of this transaction of March 24, 1906, and Hogencamp's testimony with respect to the antecedent facts, but do not, in my judgment, effectively do so; and do not, in the attempt to do so explain away the effect of the testimony and of each of the pieces of documentary proof.

The note of $35,000 which Hogencamp then gave to the Bank admittedly was not used for any other purpose than to be discounted in favor of the Suspended Debt Account. That is, the Bank at that time held Hogencamp on his $35,000 note, and, instead of giving him the proceeds (that is, the consideration which proceeded from the Bank for its receipt of the note), passed those proceeds to the credit of the Suspended Debt Account, for which account it had been holding Hogencamp responsible. The instant that they did this they carried out the purpose of the transaction, which was to hold Hogencamp and take out of the Suspended Debt Account the

moribund items which had theretofore been in it. The instant that these items were thus taken out they passed to Hogencamp, and the instant they passed to Hogencamp they became invalid as against parties to this suit. That is, the note became invalid as against Shaw. It was an accommodation note; Hogencamp was the accommodation receiver of it, and certainly could not enforce it against the accommodation maker. With the note, as has been previously pointed out, of course, the right to recover on the collateral that had been deposited with it also ceased.

If this is not so, then, of course, the Bank could not hold Hogencamp upon the $35,000; and it is inconceivable that they went through all of this transaction for no purpose; that they took his note and, by the item of Bills Discounted, passed it to the credit of Suspended Debt Account and took from him mortgages aggregating $45,000 all for no consideration—all, therefore, in its, the Bank's, hands invalid.

It is quite obvious from all of the testimony that they did not do any such futile thing as this. They took from Hogencamp a valid security secured by collateral of a large amount for a valid purpose and consideration. That valid consideration was the taking out of the Suspended Debt Account of the Shaw notes and other items for which the Bank, with Hogencamp's assent, was holding Hogencamp liable.

When they did, by this transaction, thus take those items out of that account, and those notes, (the Shaw notes and the Pratt & Wellman notes) passed to Hogencamp, they became, as has been heretofore pointed out, invalid in Hogencamp's hands so far as Shaw was concerned on his $12,000 note; and Denton's mortgage, which was

collateral thereto, likewise became invalid to Hogencamp.

By what I have termed his "re-pledge" of these notes to the Bank, the Bank cannot, certainly in my view of the facts and of the law, acquire any right to hold Shaw or Denton—Shaw on his note, or Denton on his mortgage.

The only aspect of the case in which the Bank could successfully assert any such right would be if they had advanced any new consideration at the time of re-acquiring title to the note and its attendant collateral. They did not, as has just been pointed out, do any such thing. The consideration which they advanced was the giving up of this very note to Hogencamp in consideration of which Hogencamp gave them his note for $35,000 and the $45,000 of attendant collateral. The re-pledging with or the retaining by the Bank of the Shaw notes was, therefore, ineffective as vesting them with any valid right as against Shaw on the note, or Denton on the collateral.

There is evidence in the case strongly confirmatory of the finding of facts just set forth, which unfortunately is somewhat complicated and requires a detailed explanation.

The note of $12,000 of Shaw which was originally loaned upon on the 24th day of July, 1902, was dated June 30, 1902. Why it did not bear the same date as the $13,000 note nobody explains. That note was introduced in evidence in the case of Richards vs. Shaw, and was inspected by me. It has since been mislaid or lost.

Upon the back of the $13,000 note, which it will be recalled, was loaned upon by the Bank

on the same date, there now appears in Hogencamp's handwriting an endorsement as follows: "Pay to William Hogencamp or order," under which Shaw had written his signature. Then, in Hogencamp's handwriting, "without recourse, William Hogencamp."

Hogencamp in this suit testifies that he placed this writing upon that note of $13,000 to relieve himself of the responsibility as an endorser. He testifies in this suit that he does not recollect whether he made the same endorsement on the $12,000 note. There is no conceivable reason why he should not have made the same endorsement upon both notes, since the whole transaction was one and undivided, and whatever he did with respect to one he undoubtedly in my judgment did with respect to the other. Since he, or the parties who claim through him, are chargeable with the custody and therefore, with the consequences of the loss of this note, it is proper to assume, as against them, that upon the back of the $12,000 note was the same endorsement by Hogencamp.

In the case of Richards vs. Shaw, as is shown by the testimony in this present case, Hogencamp testified that he made the endorsement quoted above on that $13,000 note when he took the note up from the Bank, which he then said was in 1905. It will, therefore, be assumed that he did the same thing at the same time with respect to the $12,000 note.

He now testifies in this suit that he was mistaken when he testified in that suit that he had taken the notes up.

I find, as above set forth, that he was not mistaken; that he did take the notes up, if not in 1905, then in 1906; and I have no doubt, from

the testimony, to which what I have just alluded is additional confirmation, that at the time that he put these notes back in the Bank—re-pledged them, as I have termed it—he wrote upon the back of each of them this endorsement.

There was no other occasion when he should have done any such thing. Up to the time that the notes were put into the Suspended Debt Account they were always in the custody of the Bank; Hogencamp had nothing whatever to do with them; was not legally held responsible with respect to them, and there would have been no occasion for him to have put any writing whatever upon them. After he made the arrangement with the Bank which he first attempted to make with Harding by which the notes passed directly to him and became his property, he having paid to the Bank the $35,000 to take them up, and it was understood that he was to repledge them with the Bank, there was opportunity and occasion for him to make them payable to his order and to endorse them "without recourse." That he did this appears from the remaining note which has not been lost, by the inference which I think should necessarily be made in this case with respect to the note that has been lost, and here is strong evidence in favor of the finding that he did take these notes up and re-pledge them in 1906 as above set forth.

The result of this analysis of the case under this first theory advanced by the complainants is that the Bank, the complainants, cannot hold Shaw upon the note, and, therefore, cannot hold Denton upon the mortgage suit, if it be settled that there is nothing due upon the Shaw $12,000 note,—that is, nothing due to the Bank as a third person who initially cashed the note; or

nothing due to Hogencamp to whom the note was originally given by Shaw, and who re-acquired it in the manner above set forth, and re-pledged it as aforesaid.

And this brings us to the second contention of the complainants. That contention, broadly stated, is, first, that the stock transaction of the 23rd of April, 1900, between Hogencamp and Denton, was a bonafide sale by the former to the latter for $24,000, and that the full consideration has never been paid by Denton to Hogencamp, and Shaw's note was given to represent that indebtedness, and while Shaw was an accommodation maker of the note, he and Denton must each be held (Shaw on the note, and Denton on the mortgage collateral to the note) until the full amount of the said consideration has been paid or satisfied to Hogencamp; and, second, that even if the transaction was not a bonafide sale, but was of such a nature that Hogencamp can hold Shaw and Denton for whatever benefit Denton got out of the use of the stock by borrowing upon it, Hogencamp or the Bank may recover as against Shaw and Denton such amount—that is, the amount which it may be determined that Denton benefitted by the use of Hogencamp's stock.

Dealing first with the stock transaction of the 23rd of April, 1900, it is extremely difficult to follow to a conclusion, reviewing the various relevant proofs, either version without being confronted by contradictory circumstances which interfere with a clear determination—that is to say, neither Hogencamp's version nor Denton's version stands the test of comparison with the other facts in the case.

Hogencamp, it will be recalled, testifies posi-

tively that on the date in question there was a simple sale by him of the stock for $24,000, and that he handed the stock to Denton and had it handed back to him as collateral, and that Denton gave his notes therefor. In contradiction of this we find, first that he never caused any stock to be transferred to Denton until August 12, 1901, that he loaned to Denton 50 shares of this very stock on the 15th of August, 1901, to be used by Denton in arranging with one of Denton's creditors in New York. This is the McKelvey transaction: That at that time Hogencamp took from Denton a $7,500 mortgage to secure Hogencamp for having loaned Denton these 50 shares of stock: We further find that on the 16th day of November, 1901, Hogencamp writes to the people who had these 50 shares of stock that he, Hogencamp, was the owner of it; that Denton never owned it, and that he had simply loaned the stock to Denton to enable Denton to borrow money upon it. We further find that Hogencamp always had the stock in his possession excepting when it was pledged for loans. He only identifies three dividend checks during all of the ensuing years which in any way went to Denton's benefit. The testimony shows that large dividends were declared twice a year upon the stock of the Second National Bank during all of the period from 1900 when this transaction is said to have taken place down to 1905 when we lose interest in it. Hogencamp does not attempt to trace any of these dividends to Denton or to Denton's benefit, excepting that he produces three checks for eighteen months of dividends which were all deposited at one time in one of the three accounts heretofore adverted to which Hogencamp was carrying in the Bank, and in which he says he was depositing Denton's

moneys. He does not pretend that Denton knew anything about these three checks, or about the receipt for his benefit of any moneys from dividends. Denton denies that he ever knew anything about any dividends, or received any dividends, or inquired for any dividends. He says that he gave a proxy to Hogencamp for the stock after the stock was transferred to him on the 12th of August, 1901, and thereafter never concerned himself with it.

Hogencamp also refers, in furtherance of his version, to the letter which he wrote and caused Shaw to sign on the 20th of August, 1901. That letter, it will be recalled, was addressed to Hogencamp, President, and requested him to deliver to Denton the 100 shares of stock, and was signed, as just stated, by Shaw. At that very time 50 shares of the 100 had already, without consulting Shaw in any way, been loaned by Hogencamp to Denton to take to McKelvey in New York to be loaned upon for Denton's benefit, and partially for Hogencamp's benefit in that he received over $3,000 of the proceeds of that loan.

In passing, it must be stated that he says that this money went to Denton's benefit in one of the three accounts containing Denton's moneys which Hogencamp says he was keeping in the Bank.

When the stock was finally obtained from the Hudson Trust Company, where the last loan was made upon it, it went back to Hogencamp and he retained it in his possession down to the 7th of September, 1905, when he sold it, together with all of the other stock which he owned in the Bank. A question has arisen in my mind, which the recital of this fact revives, whether, as against Shaw and also as respects Denton,

the $19,000 which Hogencamp says he received from this stock at that time, must not be credited on this indebtedness—perhaps I had better say "alleged indebtedness" of $24,000?

Passing this for the moment, however, we find that when he sold the stock on the date just given he gave no notice of any sort to Denton, and did with the proceeds what he willed. What he chose to do, he says, was to credit Denton with $10,000 which he says he paid for Denton at the Hudson Trust Company at the time that the loan there, to which the 100 shares was held as collateral, was paid off, and with some items of interest, and the balance he credited on an old note of Denton's for $13,000 which was dated July 19, 1901. The balance credited on this note was $7,652.80.

It will thus be seen that it is very difficult to believe Hogencamp's version of this transaction, and to find that there was a bonafide sale of this stock to Denton.

There is no earthly reason suggested why Denton, who was at that time heavily engaged in real estate operations in New York, and who was so affiliated with Hogencamp that through Hogencamp, he was then receiving and hopeful in the future of receiving large sums of money, should want to become a stockholder in the Bank. Denton says that he had no such desire, and that it never occurred to him, and that he knew nothing about the stock or its value, and never purchased it, and only participated in the transaction at Hogencamp's suggestion.

I am inclined to think and to find that the truth lies between the two versions.

What I find from the facts in evidence is that upon the date in question, April 23rd, 1900, Den-

ton and Hogencamp made an arrangement of the following nature: They each wished to do whatever would enable them to obtain the largest amount of loans from banking institutions: Hogencamp, as a stockholder in the Bank, could not obtain loans from that Bank upon its own stock: Other institutions probably would loan with this stock as collateral: Denton could not, upon his own mortgages, obtain loans upon his own notes: If Denton gave mortgages to Hogencamp, and also notes which Hogencamp would endorse, money could have been obtained upon those notes with the mortgages as collateral: If, in turn, Hogencamp put title to some of his stock in Denton, and took from him as apparent consideration notes, those notes would be used with the mortgages as just stated, and Denton could take the stock and borrow at other institutions upon notes which he would give with the stock as collateral.

I do not, therefore, find that there was any sale from Hogencamp to Denton, and this, I think, squares itself with all the facts.

I do find, however, that the transaction was about as above outlined, and that to the extent that Denton benefitted by loans obtained upon Hogencamp's stock, he must make good to Hogencamp such amounts—that is to say, if he borrowed upon Hogencamp's stock, and Hogencamp subsequently paid off the amounts thus borrowed, Denton, to the extent that he got the benefit of the original loans, must repay Hogencamp.

Whether Denton owes money to Hogencamp on the stock must depend upon the broad question of whether Denton owes Hogencamp any money. As has heretofore been pointed out, the dealings between these parties involves thousands upon thousands of dollars and concerns

innumerable items; and if, as a result of an accounting, it should appear that Hogencamp has had more money from Denton than equals all that Denton owes him, or as much money as equals what he advanced to Denton, he cannot hold Denton for anything more. Since this stock transaction was only one of a great number of these transactions between the parties, it cannot be seggregated and dealt with as if it were a separate severable item; and whether or not Denton has paid Hogencamp for the stock, or for the use of the stock, as above suggested, can only be determined after an accounting has taken place which shows as a result of it whether Denton owes any money to Hogencamp as the result of their dealings with each other.

To the extent that Denton may owe money to Hogencamp in all of their dealings, I am inclined to think that, under the facts in this case, Hogencamp would be justified in holding this Shaw note and the mortgage which is collateral to it for such amount.

Since there is nothing to show that Denton ever specifically repaid to Hogencamp the sums of money which Hogencamp proves that he paid on Denton's account to get back the stock from those from whom Denton had borrowed money with the stock as collateral, it is impossible to separate this item from the others; and if, as a result of an accounting between Denton and Hogencamp, it be shown that Denton still owes Hogencamp money, Hogencamp, or the Bank as the re-pledgee of the note with the mortgage as collateral, can attribute the payments to other things and still hold this debt open and enforcible.

Any attempt to follow Denton's version that

the entire transaction concerning the stock was for Hogencamp's benefit we are immediately met by circumstances entirely inconsistent with this explanation. A large part, if not all, of the money borrowed at various times and places upon the stock went to Denton's benefit. From his own Bank account or from accounts in which he was interested he made payments upon loans where the stock was held as collateral both on principal and interest. It is very difficult to escape from the conclusion which the Court thinks is the true one, that both the stock and the mortgages were conceived and used for the mutual benefit of Denton and Hogencamp.

My final conclusion, therefore, is that there must be an accounting between Denton and Hogencamp, and that the final decree must abide the result of that accounting.

Interlocutory Decree.

This cause coming on regularly to be heard, in the presence of Merritt Lane, solicitor for the Complainants, and Vredenburgh, Wall & Carey, solicitors for the Defendants, and the Court having heard the pleadings, and proofs having been taken in open court, and arguments of counsel having been had, and the Court having considered the pleadings, proofs and arguments; and it appearing to the Court that in the month of April, 1900, William Hogencamp was the owner of one hundred sharts of stock of the Second National Bank of Jersey City, and Henry M. Denton was the owner of the property covered by the mortgage in this suit, and that by agreement between the parties then made, Hogencamp, in form, sold to Denton the one hundred shares of stock and received from Denton two promissory notes for

Twelve Thousand Dollars each, with the understanding and agreement that, as collateral security for the payment of the indebtedness evidenced by the notes, the said Denton would, among other things, mortgage the property in question to the said Hogencamp, and that subsequently and in the month of July, 1900, by agreement between the said Denton and the said Hogencamp, a note of Twenty-four Thousand Dollars, made by Robert L. Shaw to the said Hogencamp was given to him instead and in place of the two Twelve Thousand Dollar notes made by Denton to Hogencamp, above referred to; and that subsequently and in pursuance of the original agreement between Denton and Hogencamp, Denton and wife made to Hogencamp the mortgage in question in this suit;

And it further appearing to the Court that the note of Shaw was used by Hogencamp at the Second National Bank aforesaid for Hogencamp's benefit, and, during the time that this original indebtedness existed and so long as it was continued by successive renewals of the original indebtedness by subsequently given notes, the said bank was entitled to recover on this mortgage as collateral security the whole, or such part thereof as still remained unpaid to it, of the original indebtedness;

And it further appearing to the Court that subsequently and beginning in the month of August, 1901, Denton availed himself of the stock heretofore referred to of the Second National Bank, and used the same as collateral security for moneys advanced to him by various banking institutions, and that Hogencamp subsequently paid off the said notes thus made by said Denton to the banking institutions aforesaid where the said stock was as collateral, and regained possession of the said collateral; and that Hogencamp subsequently

and in the year 1905, by arrangement between him and the Second National Bank, secured the return to him, Hogencamp, of the Shaw notes to which the mortgage in question was collateral as aforesaid, and the mortgage in question, and thereafter re-pledged the same to the said bank for whom the complainant herein is Trustee in this connection; and that the said bank is entitled to recover, in the person of the Trustee aforesaid, upon the said mortgage whatever sum of money, if any, there may be found to be due from Denton to Hogencamp, or now to the said bank, on account of moneys received by Denton upon promissory notes made by him and discounted by banking institutions with the stock aforesaid as collateral, and which note or notes, if any, were paid off by Hogencamp with his own funds for the purpose of regaining possession of the said stock, and for which sums, so found to be due Hogencamp, the said Hogencamp has not been repaid by the said Denton;

And it further appearing to the Court that the transaction between the said Hogencamp and the said Denton in the month of April, 1900, was not a sale of the stock then owned by the said Hogencamp to the said Denton, but was a mutual exchange of securities for the purpose of enabling each to borrow upon the securities of the other, thus transferred from one to the other, and results in finding indebtedness from one to the other to such extent only as either of the parties availed himself of the securities of the other to borrow money upon without repaying the same or restoring the securities unencumbered;

And it further appearing to the Court that the question of whether or not anything is due upon this mortgage and collectible by the Complainant depends upon whether or not an accounting shall

disclose any sum realized by Denton by the use of Hogencamp's stock which sum was not repaid by Denton to Hogencamp, and which sum Hogencamp had to pay to the person from whom Denton borrowed so as to regain his, Hogencamp's stock;

..NOW THEREFORE, on this Seventeenth day of May, A. D., Nineteen hundred and twelve, it is, by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the Chancellor doth, by virtue of the power and authority in him vested, hereby ORDER, ADJUDGE AND DECREE that the Complainant in this suit is entitled to have the benefit of the mortgage in suit to the extent, if any, that it may be found, upon an accounting, that Henry M. Denton owed to William Hogencamp money realized by him upon the stock of the Second National Bank owned by the said Hogencamp and transferred and loaned by him to the said Denton; and that for the purpose of ascertaining the facts with respect thereto, this matter shall be and hereby is referred to John F. Gough, one of the Masters of this Court, to take the said account, and report the same with all convenient speed; using, so far as relevant competent and material the testimony taken before the Court in the main cause.

AND IT IS FURTHER ORDERED, that either of the parties hereto may, from time to time, make applications to this Court for instructions or directions or further orders herein.

Respectfully advised,

LINDLEY M. GARRISON,
V. C.

E. R. WALKER, C.

A true copy,
SAM K. ROBBINS,
Clerk.

Testimony.

In Chancery of New Jersey.

Between

ROBERT S. HUDSPETH, Trustee, and THE SECOND NATIONAL BANK OF JERSEY CITY,

Complainants,

and

HENRY M. DENTON, MILLICENT S. DENTON and ROBERT L. SHAW,

Defendants.

On Bill, &c. Minutes of Final Hearing.

HUDSPETH & LANE, for Complainants.
VREDENBURGH, WALL & CAREY, for Defendants.

Before HON. LINDLEY M. GARRISON, Vice Chancellor.

Chancery Chambers, Jersey City,
Sept. 14, 1910.

The Case for the Complainants.

MR. LANE: I offer in evidence a mortgage made by Henry M. Denton and wife to William Hogencamp, dated September 1, 1900; recorded August 22, 1901, in Liber 75 of Mortgages, page 15, Ocean County, N. J., covering the property described in the bill of complaint, to secure the payment of the sum of twelve thousand dollars.

The mortgage is admitted without objec-

tion, and is marked Exhibit 1 of Complainant.

MR. LANE: I offer in evidence the bond to secure which that mortgage was given, bearing similar date and for a similar amount.

THE VICE CHANCELLOR: Is there any objection, Mr. Carey?

MR. CAREY: This appears to have the signature of Mr. Denton. As an enforcible obligation against Mr. Denton it is not good; under the pleadings and bill of complaint it appears that Mr. Denton has been discharged in bankruptcy since the date of this obligation; consequently the obligation has no enforcible quality against Mr. Denton.

THE VICE CHANCELLOR: Well, I do not understand that this is an action to enforce the legal obligations of Mr. Denton on this bond, excepting as the land that was pledged with it may have to respond. Does your objection go to that. Does your objection go contending that you cannot foreclose a mortgage the bond to secure which was given by a man who is a bankrupt?

MR. CAREY: No, I think that is not the law.

THE VICE CHANCELLOR: Then I admit this bond in this action for the purposes of this case.

The bond is marked Exhibit 2 of Complainant.

MR. LANE: I offer in evidence an assignment made by William Hogencamp to

Dwight S. Harding, dated March 22d, 1906, duly recorded, reciting a consideration of $12,000.

THE VICE CHANCELLOR: Is there any objection, Mr. Carey?

MR. CAREY: It seems to be admissible.

The assignment is admitted in evidence and is marked Exhibit 3 of Complainant.

MR. LANE: I offer in evidence an assignment made by Dwight S. Harding to Robert S. Hudspeth, Trustee, assigning the mortgage in question, duly recorded, reciting a consideration of $12,000, dated April 10, 1906.

The assignment is admitted without objection, and is marked Exhibit 4 of Complainant.

WILLIAM HOGENCAMP, sworn.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Hogencamp, where do you live? A. Deal Beach, New Jersey.

Q. Were you, at any time, an officer of the Second National Bank of Jersey City? A. I was.

Q. For how long a time? When did you cease to be such officer? A. I think it was early in 1906.

Q. What officer were you? A. I was President of the Bank.

Q. Did you know Mr. Henry M. Denton? A. I did, and I do.

Q. I show you Exhibits 1 and 2 of Complainants, and ask you whether they came into your possession? A. They did.

Q. In what capacity? A. As President of the Bank.

Q. Was there any interest paid on this bond and mortgage? A. No.

Q. Are you sure of that? A. Well, there was an arrangement of settlement of interest with Denton; there were settlements of interest and payments of interest from Mr. Denton to me, and about that particular transaction I do not recollect just now.

Q. I show you check dated March 14, 1903, signed Henry M. Denton, and ask you whether that refreshes your recollection as to whether there was any interest paid on this, and what date it was paid? A. This is a check for $807.82, endorsed "Shaw, $629.26; Hanford, $72.00; Denton's Balance $106.56, interest account"—that is payment for interest, evidently.

Q. On this mortgage? A. It is on all the transactions we had with him at that time.

Q. Was this mortgage included in it? A. The amount represented by that mortgage was.

Q. I am talking about the obligation to secure which this mortgage was given—was that included in it? A. Yes.

Q. And do you remember to what date that interest was paid? A. March 14, 1903.

Q. Was there any interest on the obligation to secure which this mortgage was given paid subsequent to that date, after that? A. I don't recollect now.

Q. Was there any, to your knowledge? A. Not to my knowledge; I have no recollection of any; it is seven years ago.

MR. LANE: I offer that check in evidence.

BY MR. CAREY:

Q. How do you know this check paid interest on the bond and mortgage, Exhibits 2 and 3? A. It was a settlement of interest up to that time.

Q. How do you know that? A. For the indebtedness of Denton.

Q. How do you know it was a settlement of interest up to that time? A. Why, I knew it was.

Q. How do you know it? A. The fact of his giving the check at that time.

Q. There is nothing on this to indicate what obligations this paid interest on, is there? A. On that?

Q. Yes. A. No, nothing on the paper.

Q. And Denton had a large number of other matters in that Bank, did he not? A. He had other matters.

Q. And, so far as your recollection shows—that is, so far as your recollection goes—it may have been with respect to these other matters entirely, and not with respect to this? A. I am satisfied it was a payment of interest on everything of all description up to that time.

Q. But you don't know it? A. Well, as much as I know anything.

Q. In whose handwriting is the body of this check (handing the check to the witness)? A. It is in mine.

Q. And in whose handwriting are the notations on the back of the check? A. Mine.

Q. For how long a period did this check pay interest on Exhibits C-1 and C-2? A. I don't know.

Q. Is this the only interest payment that was made on account of C-1 and C-2? A. I don't recollect that.

Q. And how do you recollect that this is a payment on account of C-1 and C-2? A. Because, when the settlement was made it included all the interest on everything that was owing in the Bank at that time.

Q. Did you make a settlement? A. It was a settlement at that time.

Q. Did you make a settlement? A. Well, I figured up the interest.

Q. With whom did you make a settlement A. With Mr. Denton.

Q. And what items did you figure up interest

on? A. All the obligations that was due in the Bank at that time.

Q. Have you any memorandum showing what obligations and the length of time that interest was figured on when this payment was made? A. I have not.

Q. How much of this went to pay interest on C-1 and C-2? A. That I don't know.

Q. Did all of it go to pay interest on C-1 and C-2? A. No.

Q. How do you know that any part of it went to pay C-1 and C-2? A. Because, as I said before, the interest was calculated on all the indebtedness up to that date.

Q. Do you remember the transaction? A. As referring to the check, yes.

Q. You remember nothing but what you see on this check, do you? A. What I see on that check.

Q. That is all. Did Mr. Denton have an account in the Second National Bank at this time? A. He did.

Q. I notice there "Denton B." A. Denton balance."

Q. Then, opposite that, "$106.56." A. Yes.

Q. And that was all that Denton owed at that time, was it? A. That was all that Denton owed at that time, yes, sir—the balance of interest.

Q. And you have no recollection of any other payment of interest between September 1st, 1900, and March 14th, 1903, except what is shown by this check? A. That is all I recollect now.

By the Vice Chancellor:

Q. If the notations on the back correctly repre-

sent what became of this $807.82, then no more than $106.56 could possibly have been credited on account of the bond in this suit, could there? A. That was the balance of the interest; yes, sir.

Question repeated.

A. I think not.

Q. Is there any doubt about it? I have assumed in my question that those notations correctly represent what distribution was made of the money—now, if they correctly represent the distribution of the money, then no more than $106.56 of that sum of money could have been used to pay interest on this bond, could there? A. I think that is correct; yes, sir.

MR. CAREY: I object to the admission of this check in evidence, on the ground that, from the testimony of this witness, it has not been connected with this case sufficiently to warrant its admission.

THE VICE CHANCELLOR: Well, I will have to admit it. He has testified positively that $106.56 of that check went to pay the interest on this mortgage, and the complainants certainly have a right to prove, as against their own interest, if you please, what sums of money they have received, and if they credited you with that much, I cannot see how I can exclude it.

Check admitted and marked Exhibit C-5.

BY MR. LANE:

Q. Was there anything paid on account of the principal of that bond and mortgage, Mr. Hogencamp? A. No, sir.

THE VICE CHANCELLOR: You mean, to his knowledge, of course?

Q. Up to the time you ceased to be President of the Second National Bank? A. Nothing had been paid.

MR. LANE: That is all on this part of the case.

THE VICE CHANCELLOR: What other part of the case can there be?

MR. LANE: There may be a defense. I am through with this witness for the purpose of proving the amount due upon the mortgage; that is all I called him for.

THE VICE CHANCELLOR: Well, you have finished with the witness in your case?

MR. LANE: In my direct case; yes, sir.

Q. When did you receive Exhibits C-1 and C-2? A. What was C-1?

THE VICE CHANCELLOR: The bond and mortgage in suit, he means—when did you physically get your hands on the papers?

A. Oh, it must have been eight or ten years ago, maybe longer.

Q. Well, at what date? A. I do not recollect that, sir.

Q. At the time they bear date? A. I am not certain of that; it is so long ago that I do not recollect, and could not testify now positively as to that.

Q. Where were you when you received them? A. Second National Bank.

Q. Who gave them to you? A. Mr. Denton.

Q. Do you remember the occurrence? A. Yes, sir.

HENRY M. DENTON, sworn.

DIRECT EXAMINATION BY MR. LANE:

Q. Where do you live? A. Avone-by-the-Sea, New Jersey.

Q. Have you, Mr. Denton, paid on account of the bond and mortgage in suit here, since 1905, any moneys or interest? A. No, sir.

CROSS EXAMINATION BY MR. CAREY:

Q. Have you paid any moneys or interest on account of this bond and mortgage since September 1st, 1900, the date when it was given? A. No, sir.

COMPLAINANTS REST.

Colloquy.

MR. CAREY: If the Court please, there does not seem to be any necessity for the defendant to put in any evidence in this case at the present time under the pleadings in the case. The bill alleges, in the first place, that Denton was indebted to Hogencamp, and that he gave to Hogencamp a bond and mortgage to secure that indebtedness which amounted to twelve thousand dollars—

THE VICE CHANCELLOR: One minute. You are misstating the bill.

MR. CAREY: Subsequently the bill states that "at the time the bond and mortgage was given it was given to William Hogencamp to secure the Second National Bank of Jersey City for moneys advanced by the Second National Bank of Jersey City to Henry M. Denton and Millicent S. Denton at the time said mortgage was made, executed and delivered; that your orator, Hudspeth, holds the bond and mortgage as trustee for your orator, the Second National Bank."

THE VICE CHANCELLOR: That is the averment.

MR. CAREY: Now, the evidence introduced (C-1 and C-2) on the face of it indicates an indebtedness from Denton to Hogencamp. There is nothing in the evidence to change that supposition. There is nothing in the evidence to show that the Second National Bank is in any way connected with this bond and mortgage, or that it advanced any moneys whatever on account of this bond and mortgage. That is the position

in which the complainants place themselves—that at the time this bond and mortgage was given *not* Hogencamp *but* the Second National Bank advanced to Denton and wife twelve thousand dollars. The proofs do not show it.

THE VICE CHANCELLOR: Well, does that relieve you from defending? Would not that only enable you to move, at the proper time (and this may be the proper time to so move—I will pass that for the moment), but would not it only enable you to move to either have the bill dismissed because it was multifarious, because of non-joinder of complainants, or something of that sort? In other words, the seal upon the bond imports a consideration until it is denied. They have proven the bond. You surely would have to respond to a case if Hogencamp, or someone directly in the line of Hogencamp's succession, were the only complainant. I understand your point is that the Second National Bank of Jersey City is a complainant, and there is no proof that the Second National Bank of Jersey City has any concern in this matter whatever—that is your point, is it not?

MR. CAREY: Under their pleadings; yes, sir.

THE VICE CHANCELLOR: Oh, no; under their pleadings they have, surely. Under their pleadings the Second National Bank has a very great stake.

MR. CAREY: Oh, yes; I have misstated it.

THE VICE CHANCELLOR: You said that

under their proofs there is nothing to show that the Second National Bank has anything more to do with this thing than Timothy Smith of Nova Scotia, because they do not show that the Second National Bank had any concern in it—that is your point; but I do not know that I can say that that would relieve you of the necessity of making a defense. It would relieve you of the necessity, perhaps of defending against this bill in its present shape.

MR. CAREY: That is the point which I wish to make—that they deny in their bill that Hogencamp advanced any money, so that, as far as any consideration moving from Hogencamp is concerned, there is none. They say that money which was advanced was advanced by the Second National Bank, and they have not shown it.

THE VICE CHANCELLOR: And you deny it in your answer, so that is the issue.

MR. CAREY: That is the issue which they tender to us.

THE VICE CHANCELLOR: Now, the question, Mr. Carey, is this—do you rest?

MR. CAREY: Well, if this were a proceeding in a court of law, of course I would move now for a non-suit.

THE VICE CHANCELLOR: Now, not being able to do that, what do you do?

MR. CAREY: Well, I call the attention of the Court to the fact.

THE VICE CHANCELLOR: Well, the Court's attention was already called to it. The question is whether I can do anything at

all until you rest. If you rest I can dispose of the case as I think proper; but until you rest what can I do under our equity practice?

MR. CAREY: It seems to me that a motion may be entertained at this time to dismiss the bill.

THE VICE CHANCELLOR: So it may, of course, if you rest—otherwise I am adopting a principle, which has never been afforded by our equity practice, of non-suiting. No, I shall deny your motion at the present time. I do not think I can find any warrant in our equity practice for entertaining a motion, which, as you say, is practically a motion for a non-suit. There is only one case where there is even any suspicion of that in our practice, and that is under the Act to Quiet Title, where the Courts have held that the jurisdictional requirement that the party shall be in peaceful possession of the disputed property, claiming to own the same, must be proven by him before the Court will go on, and if, when he has finished his case, it does not appear that he has offered any evidence that he is in peaceable possession, claiming to own the same, the Court will then entertain what is practically a motion for a non-suit. But that is the only instance that I know of in our practice. So considering that you have made a motion in the nature of a motion to non-suit—that is, a motion to dismiss the bill now because the complainant has failed to prove his case as set out in his bill—I will deny the mo-

tion. I will deny it, not therefore finding that he has proven it, understand—not upon the ground that I disagree with you that his *allegata* do not agree with his *probata*—but on the ground that it is practically a motion for a non-suit, and I do not know of any practice in New Jersey that will enable me properly to entertain such a motion. If you close your case, and then say exactly what you have already said, that is another matter; but unless you close your case I do not understand that I can properly entertain a motion to dismiss the bill. I make this suggestion: I am not sure that I ought not to hear a motion at this time for a decree in your favor as to the Second National Bank.

MR. LANE: If your Honor please, I want to be heard on that. Your Honor will find that the testimony shows, now in without contradiction, that at the time Mr. Hogencamp took this mortgage he took it as Trustee of the Second National Bank and as President of the Second National Bank. That is in.

THE VICE CHANCELLOR: Yes, that is true; that is in; there is no doubt of that; but there is no allegation that the Second National Bank ever advanced any money.

MR. LANE: Well, I think if Mr. Hogencamp takes a mortgage as trustee for the Second National Bank and takes a bond in this form, the inference is that the Second National Bank advanced the money; otherwise he would not take it as trustee for the Second National Bank.

THE VICE CHANCELLOR: He did not take it as trustee for the Second National Bank.

MR. LANE: He so stated.

THE VICE CHANCELLOR: I know he testified to that, but the bond itself does not contain any suggestion that he is in any other capacity than an individual capacity. It is is not given to him as President or Trustee for the Bank. The seal imports a consideration for that bond, namely, that Hogencamp was the creditor of Denton. Now Hogencamp swears that he took it for the Second National Bank. But does that import that the Second National Bank advanced money to Denton? I do not know of any such principle as that.

After further argument:

THE VICE CHANCELLOR: I will consider that Mr. Carey has made a motion of the character above outlined, and I will reserve my conclusion with respect to the disposition of that motion until a later period in the trial of the cause.

MR. LANE: Now, if your Honor please, I do not want the case to assume that technical attitude. I move now for permission to recall Mr. Hogencamp and put in proof tending to prove who advanced this money.

THE VICE CHANCELLOR: Is there any objection?

MR. CAREY: No.

THE VICE CHANCELLOR: I will grant it.

WILLIAM HOGENCAMP, recalled.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Hogencamp, who advanced the money to secure which this mortgage was given? A. The Second National Bank of Jersey City.

Q. And when you took the mortgage in what capacity did you take it? A. As President of the Second National Bank.

Q. Mr. Hogencamp, how long a time had you known Mr. Denton before the date of this mortgage, September 1, 1900?

MR. CAREY: I think that is immaterial. We are called upon here to meet an allegation of the fact that at the time this mortgage was made the Second National Bank advanced the money to Denton—that is what we are called upon to meet.

THE VICE CHANCELLOR: I overrule the objection, and will let the witness answer that question.

A. Probably five to ten years; I don't recollect.

Q. And was he a dealer at the Bank? A. He was.

Q. A large dealer? A. Yes.

Q. Had he been borrowing money from the Bank? A. He had.

Q. To what extent?

MR. VREDENBURGH: Now, do not the books show that, may it please your Honor?

THE VICE CHANCELLOR: Do you object to this?

MR. VREDENBURGH: I object to it upon the ground that it seems to me that the books will show it. Of course they will all have to come in, I take it for granted; but it would seem to be illegal to ask this witness about those things which he cannot know except through the books of the Bank.

THE VICE CHANCELLOR: It is not a case in which the books are the only evidence. If the man has knowledge he can testify to it. I will overrule the objection on the ground that he cannot testify to it because a book also shows it. (To the witness) If you know just exactly to what extent, tell us.

A. I do not.

Q. Well, approximately A. Oh, thousands and thousands of dollars.

Q. In April, 1900, did you have any transaction with him with respect to any purchase of stock?

MR. CAREY: I object to that as outside of the issues. We are called upon to meet an allegation that the Second National Bank advanced the money on this bond and mortgage at the time when it was given, and that Mr. Hogencamp took the bond and mortgage as trustee for money advanced by the Bank to Denton and wife.

THE VICE CHANCELLOR: How can I tell that this question may not be the proper foundation to prove the allegation in the bill Just take this instance: Suppose that in April of 1900 Mr. Hogencamp sold a

thousand shares of United States Steel Corporation stock to Mr. Denton, and that Mr. Denton did not pay him, and that on the 1st of September, 1900, Mr. Denton went to the Second National Bank and borrowed twelve thousand dollars in cash from them to pay Mr. Hogencamp?

MR. CAREY: Then, your Honor, I should say that the transaction between Mr. Denton and Mr. Hogencamp was entirely immaterial. The Bank must show, according to their allegation, that on this date they did advance this money—what it was for don't make any difference, if they advanced the money. If it was to enable Mr. Denton to raise money to pay Hogencamp, or Tom Smith, or anybody else, that is not material. The material thing is did the Bank advance the money; and whatever dealings Mr. Hogencamp or any third person may have had with Mr. Denton cannot throw any light on that subject. The bank must have some record of money advanced, if they advanced it; and if they advanced it at the time, then let them put in evidence of such advancement; but not undertake to show that Mr. Denton had some transaction with Mr. Hogencamp six months before.

THE VICE CHANCELLOR: I think there is great force in that. What do you think about it, Mr. Lane?

MR. LANE: I think I am entitled to show the whole basis for the allegation that the Second National Bank advanced the money to Mr. Denton, and this is offered as

a part of the transaction between Hogencamp and Denton, and finally leading up to the bank's intervening in the transaction.

THE VICE CHANCELLOR: I think you have got your cart before your horse. I think the first thing for you to do, if you are attempting to prove the allegation of the bill, is to prove that the bank advanced the money; and then, if there is any question about the bona fides, or what not, you may be able to go back to some earlier transaction between other people.

MR. LANE: Then I will rest, because I have already proved by Mr. Hogencamp that the bank advanced the money.

THE VICE CHANCELLOR: All right. He turns the witness over for cross examination, Mr. Carey.

CROSS EXAMINATION BY MR. CAREY:

Q. You say that the Second National Bank advanced money to Mr. Denton on these Exhibits C-1 and C-2

THE VICE CHANCELLOR: You are merely reciting now. That is not a question, unless you put the words "Do you" after it, or something of that sort.

Q. Do you say that the Second National Bank advanced money to Mr. Denton on this bond and mortgage, Exhibits C-1 and C12, on the date when the bond and mortgage was given, or when it is dated, which is September 1st, 1900? A. I cannot be sure as to the date.

Q. If the bank advanced money at that date to Henry M. Denton, then the books of the bank

will show that, will they not? A. Yes, sir; I should say so.

Q. Now, you have the books of the bank here, have you not? A. I have not.

Q. They are here, are they not? A. I do not know. I have not looked them over. Mr. Lane can tell you.

MR. CAREY: Mr. Lane, have you the books of the bank, showing the account of Mr. Denton on September 1st, 1900?

MR. LANE: I won't respond to that request unless I am required to. This is not your case. I do not understand that you can call for the books of the bank now.

MR. CAREY: The witness says that the books of the bank will show that the money was advanced to Mr. Denton and show the time.

THE VICE CHANCELLOR: Well, what of it?

MR. CAREY: I will ask the witness a further question:

Q. If $12,000 was advanced to Mr. Denton on this bond and mortgage, what book or books of the bank will show that? A. I do not recollect the particular shape now, Mr. Carey, in which that paper was; it is ten years ago, nearly.

Q. Well, in what shape might it have been? A. It might have been on the credits; it might have been on the Discount Journal.

Q. It might have been on the credits, you say—what do you mean by that? A. Or, not on the credits; I made a mistake; it might have been on the debits, on the Debit Cash book of the bank.

Q. On the Debit Cash book of the bank? A. Yes, sir.

Q. If it appeared on the Debit Cash book of the bank, in what way would it appear? A. As a charge to Call Loans, or Bills Discounted.

Q. One of those two? A. I should say so; yes, sir; as far as I recollect it now.

Q. Well, do you recollect anything about it? A. I have no definite recollection on it just now.

Q. Then you do not recall that the bank advanced this money to Henry M. Denton, on this bond and mortgage, C-1 and C-2, on September 1st, 1900? A. Not on September 1st, 1900; no, sir;

Q. And you do not recall that the bank, at the time this bond and mortgage bears date, September 1st, 1900, advanced any money to Millicent S. Denton, the wife of Henry M. Denton? A. I do not.

Q. Do you?

THE VICE CHANCELLOR: He says he does not.

MR. LANE: I want to interrupt, if your Honor please; I want to make a motion.

THE VICE CHANCELLOR: What is your motion?

MR. LANE: We are simply wasting time here, under this bill. The bill does allege (page 14) that "it was given to the said William Hogencamp, to secure the Second National Bank of Jersey City, for moneys advanced by the Second National Bank of Jersey City, to said Henry M. Denton and Millicent S. Denton at the time said mortgage was made, executed and delivered."

Now, that is not a true statement of fact. There is no use wasting time here to discover that that is not a true statement of fact, because we all know it is not.

THE VICE CHANCELLOR: I do not know that it is not.

MR. LANE: Your Honor may not know it in this case, but your Honor knows it in the other case.

THE VICE CHANCELLOR: Well, I do not remember anything about the dates.

MR. LANE: My motion is to amend the bill of complaint by striking out of the bill of complaint the words "at the time the said mortgage was made, executed and delivered." There is no use trying this case on technicalities for an entire day, and then have it result in the dismissing of this bill and the filing of another bill. The mortgage is not outlawed by any manner of means, and we are simply wasting time with this.

MR. CAREY: If the Court please, I say this: That it seems to be evident, from the statement of Mr. Lane, that he cannot prove his bill. Now his bill ought to make a clear issue. We ought to know exactly what we are to meet, and the full details of everything. Now, it is perhaps apparent, from notices which have been served upon us within a day or two, that they do not expect to prove this bill of complaint, but that they expect to prove something else. We do not propose to be technical, if your Honor please, any further than this: In this litigation, which has been pending in this court for two or three years, involving the

matters a part of which are in litigation here, it is evident that there has been great trouble in getting the issues to be tried before the court. There has been great difficulty, apparently (either intentional or unintentional), to get these issues stated in the pleadings. Now, the situation is so complicated that the pleadings ought to set out exactly what we are called upon to answer. The sources of information are so voluminous that, in all fairness to us, what they want to prove and what they expect to prove ought to be clearly set out in their bill; and it may be, and probably will be, necessary for them to amend the bill. Now, if the bill is to be amended, let it me amended so that they are ready to stand upon their bill, and stand upon the issues tendered by their bill, and give us an opportunity to answer such a bill as that. That is all we ask.

THE VICE CHANCELLOR: Well, what Mr. Lane now says is this: that he desires to be permitted to amend this bill by striking out of it the following words on page 14, "and Millicent S. Denton at the time said mortgage was made, executed and delivered," and by adding these words, after the words "said Henry M. Denton," "or for his use."

MR. LANE: Yes, to add those words "to said Henry M. Denton, or for his use." They may say here that we advanced it upon our books to Robert L. Shaw; probably our books will show that the note we discounted was the note of Robert L. Shaw, which was the indebtedness, however, of

Henry M. Denton. It was really money advanced to Henry M. Denton, and for his use. Shaw was the accommodation endorser. That has been their contention all the way through this litigation.

THE VICE CHANCELLOR: The amendment which Mr. Lane proposes is on page 14, in the second paragraph of that page, to strike out and insert words so that the said paragraph shall read as follows: "And your orators further show that said bond and mortgage was given to said William Hogencamp to secure the Second National Bank of Jersey City to said Henry M. Denton, or for his use," and the balance of that paragraph, beginning "And your orator, Robert S. Hudspeth, holds," will continue to read in the amendment as it now reads. Now, Mr. Carey, I want you to state your objection to my granting that motion.

MR. CAREY: My objection to the amendment as stated is that it is indefinite as to time. It is indefinite as to the amount of money advanced. It is indefinite as to the person to whom the money was advanced. All of these things ought to be definite, so that we will know, and we will have these parties tied by their pleadings to something definite; and not only that, but so we may know what we are called upon to meet, and what evidence we must produce in order to meet the case which the amended pleadings would make.

THE VICE CHANCELLOR: In other words, you plead surprise to this, do you?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: Surprise, and the fact that it inadequately states the matter which it purports to state.

MR. CAREY: Yes, sir. The bill is indefinite.

THE VICE CHANCELLOR: (After argument by Mr. Lane) Mr. Lane points out that the defendants cannot properly plead surprise because their answers relate to the very matter which he will have to go into to prove the allegations in the amendments, and the answers fully state the defendants' position with respect to such matters. Now, what have you to say about the idea that you have not properly and adequately and fully set forth the averments in this respect in this amendment so as to apprise them of the case they are required to meet under it, Mr. Lane?

MR. LANE: If your Honor please, I think that the only pleading required to be stated is the facts, and that the only fact we are required to state, in a bill to foreclose, is that the money was advanced, and that is all. I have no objection, if there is any question as to the adequacy of the averment, to place upon the record, as an additional amendment the facts which I intend to prove, if they want the facts which I intend to prove. I am not endeavoring to dodge the issue here at all. If they want me to put in the bill of complaint the entire history of this transaction, and what we intend to prove, I will do it; I will do it now.

THE VICE CHANCELLOR: What have you to say to that, Mr. Carey? That meets your other objection?

MR. CAREY: If they will state fully and precisely what they intend to prove—if they will state the history of the transaction which they say now they are going to put in evidence, I say that is the kind of amendment we want—if they are going to undertake to prove that kind of a case.

THE VICE CHANCELLOR: You need not go any further. Mr. Lane says he is willing to do it, and you want it, and the Court says it is willing to let him do it. Mr. Lane is now going to state, as I understand it, the thing which you said you had a right to have him state.

MR. CAREY: Yes, but then we want, in addition to that, after he has made his statement of the case which he expects to prove, an opportunity to answer that case.

THE VICE CHANCELLOR: We will see what it is first. You may have already answered it. How can I tell? I won't cross that bridge until I come to it. Do you want to dictate it now, Mr. Lane, to Mr. Black?

MR. LANE: I will dictate it right now on the minutes here.

Mr. Lane moves that, in addition to the amendment which has just been suggested, he desires to amend his bill by inserting averments as follows:

"And your orators further show, that prior to April, 1900, Henry M. Denton was a depositor and customer with the Second National Bank of Jersey City, and had borrowed large sums of money from that

bank, at no time being indebted to the bank for less than twenty or twenty-five thousand dollars, generally: That, on or about the month of April, 1900, William Hogencamp, President of the Second National Bank, sold to Henry M. Denton one hundred shares of the stock of the Second National Bank at a valuation of $240 each, and that Henry M. Denton gave the said William Hogencamp, at that time, two notes, dated April 23, 1900, each in the sum of $12,000: That William Hogencamp could not discount the notes with the Second National Bank because of the large indebtedness of Denton to that bank at that time; and that thereafter, and on or about the 23rd day of July, 1900, William Hogencamp insisted that the said Denton should take up the notes, and thereupon the said Denton caused Robert L. Shaw to give a note of $24,000, dated July 23rd, 1900, which note was discounted by the Second National Bank of Jersey City, and came into the possession of that bank as a bona fide holder for value: That, as security for the payment of the note, the said William Hogencamp, as President of the Second National Bank, held the one hundred shares of stock sold by him to the said Henry M. Denton.

"And your orators further show that, in order to secure the Second National Bank for such loans as it might make to him and for such indebtedness as he might be under to the bank, and also to secure the said William Hogencamp, the said Henry M. Denton, on or about the 1st of September,

1900, caused to be made to the said William Hogencamp the bond and mortgage mentioned and described in this bill of complaint; and that bond and mortgage was retained by the said William Hogencamp as general collateral for the indebtedness of the said Henry M. Denton to the said Second National Bank of Jersey City and to the said William Hogencamp.

"And your orators further show that on or about the 20th day of August, 1901, the said Henry M. Denton desired to raise money upon the one hundred shares of stock of the Second National Bank then held by the said Williom Hogencamp as trustee for the Second National Bank to secure the note of Robert L. Shaw, and thereupon the one hundred shares of stock was released and taken by the said Henry M. Denton and used by him for his own purpose; and at that time the bond and mortgage mentioned and described in this bill of complaint was, by the said William Hogencamp as trustee for the Second National Bank of Jersey City, recorded, and particularly applied to the securing of twelve thousand dollars of the indebtedness carried on the books of the bank as that of Robert L. Shaw, but really the indebtedness of Henry M. Denton: That on or about the 27th day of August, 1902, the form of the indebtedness held by the Second National Bank was changed into two notes, one of $13,000, dated August 27, 1902, and another for $12,000, dated June 20, 1902, both discounted by the Second National Bank upon or about the 28th day of

August, 1902; and the bond and mortgage mentioned and described in the bill of complaint was at that time, and still is, held by the Second National Bank of Jersey City, or its representative, to secure the payment of the note of June 20, 1902."

THE VICE CHANCELLOR: What have you to say to that, Mr. Carey?

MR. CAREY: If the Court please, we ought, in view of the proposed amendment, to have the amendment written out for our examination. I have that much to say in the beginning. Now, it is obvious, of course, that the amendment is quite long, and quite involved, and brings in matters which are not discussed at all either in the bill or in the answer in the case as it now stands. They are making an entirely different case from what they have made by their bill. Our case does not fit this case at all, and the case made by the bill is that on the 1st day of September, 1900, Hogencamp took this bond and mortgage, Exhibits C-1 and C-2, in his own name as trustee for the Second National Bank for money which the Second National Bank at that time advanced to Denton and his wife. That is the gist of their bill. Now they come in and say, as a preliminary, that Denton was a dealer with the bank; that he was largely indebted at this time; that his indebtedness never at any time was less than twenty or twenty-five thousand dollars; and they set out a transaction between Denton and Hogencamp which is alleged to be a sale of stock for a consideration—a consideration which was paid by notes of

Denton's, those notes not going into the bank at all; that those notes were subsequently replaced by a note of Shaw's, another person entirely, and that that note of Shaw, which is dated in July, 1900, was subsequently replaced by two other notes of Shaw, and that at a certain time there was a change in collateral, that this bond and mortgage (which are now alleged to be held by the bank not to secure an original indebtedness, but as a collateral for some other indebtedness) was shifted from its character as general collateral to special collateral, and that this collateral was held for the bank, and the two sets of collateral were held by the bank and by William Hogencamp. Now, it is obvious that we have not met that case at all by our answer.

THE VICE CHANCELLOR: It seems to me, from reading your answer, that that is exactly the case you have met. You have gone on and told all about this stock transaction in your answer, and said it was not a bona fide sale at all—that it was a mere colorable transaction to benefit Hogencamp; that neither at the time you gave the mortgage, nor at the time that the land was transferred to Shaw, nor at the time of the assignment to Harding, nor at the time of the assignment to Hudspeth, did you owe anything on the mortgage whatever. Now, why would not that answer exactly fit the case which Mr. Lane now says he wants to make? You knew in advance, as your answer shows, what the pretended consideration of this bond and

mortgage was, and you set out your version of the transaction. Their version is a different one. Now that is the case I am to try. How can you honestly say you are surprised by anything in that amendment when, before there was a word of it in the bill, you anticipated what they were going to prove and have set out your side of it?

MR. CAREY: No, but we did not anticipate that they were going to prove an indebtedness of Shaw to the bank on a twenty-four thousand dollar note which was substituted for notes of Denton. What we say is that this mortgage which they are undertaking to foreclose is not a mortgage for value because the transaction which it represented was a fictitious transaction between Hogencamp and Denton.

THE VICE CHANCELLOR: (After further discussion) I will give you until next Tuesday. I think it is fair that the defendants should have an opportunity to put in their answer to this new matter, and I will give you until next Tuesday.

MR. CAREY: Then, your Honor, in view of this amendment, it is apparent, I think, that Mr. Hogencamp is a necessary party to this proceeding.

THE VICE CHANCELLOR: (After further discussion) Mr. Lane is to have the rest of to-day to determine whether or not to make Mr. Hogencamp a party, and if he determines to make Mr. Hogencamp a party he is to immediately notify Mr. Carey of that fact; and if Mr. Lane desires to proceed with the suit, he must see to it that Mr. Hogencamp is brought into the suit

and an answer is filed, and issue joined, before next Tuesday, when I will then proceed to the trial of the suit so far as the other defendants are concerned, if the case is then ripe as to all the defendants.

MR. LANE: (After consultation with Mr. Hogencamp) I will, if your Honor please, make Mr. Hogencamp a party, and allege that he may have an interest in the subject matter of litigation, and he will answer and say that he has no interest excepting after the bank is satisfied.

After considerable discussion by the Court and counsel, counsel for the defendants waived all rights to more time to prepare for the actual trial, reserving, of course, the right to formulate answers to the amendments which the Court, by its order now, permits the complainant to make, as they appear above in the minutes of the trial. With this understanding the trial of the suit was then resumed as upon the amended pleadings, the defendants hereafter to prepare and file such answers to the amended bill as they see fit.

DIRECT EXAMINATION OF WILLIAM HOGENCAMP RESUMED BY MR. LANE:

Q. Now, Mr. Hogencamp, in April of 1900 did you have any dealings with Mr. Denton with respect to the sale of stock? A. I did.

Q. What was that transaction? A. I sold him 100 shares of Second National Bank stock.

Q. At what price? A. Two hundred and forty.

Q. When you sold him that 100 shares of bank stock did you get anything in return? A. There was two mortgages—

Q. No, no, by way of notes, I mean? A. Yes, I got his notes.

Q. I show you two notes, dated April 23d, 1900, made by Henry M. Denton to the order of himself, each for $12,000, and each payable in two months, and ask you whether those are the notes which you received? A. Yes, sir; they are the notes.

Q. Do you know the signature of Denton? A. I do.

Q. Are those the signatures of Denton? A. They are.

Q. Are the endorsements Denton's signature? A. They are.

MR. LANE: I offer those two notes in evidence.

BY MR VREDENBURGH:

Q. I call your attention to the word "Cancelled" on each note; whose handwriting is that? A. Mine.

Q. Is there any other part of the face of the notes in your handwriting? A. It is all in my handwriting, except his signature on the front and on the back.

Q. On the back of each of the notes I see the words "Interest paid to December 1st, 1900,"—whose handwriting is that? A. Mine.

Q. I notice, on the back also of each, stamps of the amount of $2.10 cancelled—who cancelled them? A. H. M. Denton. That is his initials.

Q. I notice on the back respectively of each note the words "Exhibit C. complainant, May 14th, '08," and "Exhibit B, complainant, May 14th, '08"—in whose handwriting is that? A. I don't know.

Q. Did you produce them at any trial in which

they were marked exhibits, as shown on the backs —Exhibit C and Exhibit B? A. They were introduced by Mr. Lane.

MR. LANE: I deny the imputation.

THE VICE CHANCELLOR: Your memory fails you; it was Mr. Hudspeth.

THE WITNESS: Mr. Hudspeth, was it? Well, it was somebody; I know I did not introduce them.

THE VICE CHANCELLOR: What Mr. Vredenburgh really means is whether, once before when you were a witness in this matter in this court, weren't these notes produced and put in evidence; that is what he means.

THE WITNESS: They were.

Q. You saw them at that time? A. I did.

Q. The word "cancelled" on each of these notes, was not there at that time, was it? A. They were. The words were there at that time.

MR. LANE: I offer them.

The two notes are admitted without objection, the note heretofore marked B being now marked Exhibit C-6, and the one heretofore marked C being now marked Exhibit C-7.

BY MR. LANE:

Q. Were those notes, those two particular notes, ever discounted at the Second National Bank? A. They were not.

Q. They were given to you for what? A. In payment for the stock.

Q. And held by whom? A. By me.

Q. How long were they held by you? A. I do not recollect that.

Q. Before you put the word "Cancelled" on, if you recollect that? A. I do not remember.

Q. I show you another note, dated July 23d, 1900, for $24,000, made by Mr. Shaw to the order of himself, Second National Bank, and ask you what relation that $24,000 note has to the two $12,000 notes, if any? A. It took up the two $12,000 notes.

Q. And how did it come that Mr. Shaw gave you his note for $24,000 to take up the two Deneon notes, if you know? A. I wanted something that I could use in the bank.

Q. That you could use where? A. In the Second National Bank.

Q. Did you have a conversation with Mr. Denton with respect to taking up those two notes? A. I did.

Q. And, generally what did you tell him? A. That I wanted something that I could use and get the money on in the Second National Bank.

Q. Did you tell him why you could not use his notes? A. Well, yes, I told him why I could not use his notes.

Q. Well, why couldn't you use his notes? A. That we had other loans there to him, as much as the bank wanted to carry on his name.

Q. When you told Mr. Denton that—when you had this talk with Mr. Denton, what did Mr. Denton say? A. Why, the arrangement was he got Mr. Shaw's note to take up these two twelve-thousand dollar notes of his own with.

Q. Did you see Shaw then? A. I do not recollect that.

Q. Do you remember where that note for $24,000 was signed? A. I do not.

Q. Was that $24,000 note discounted by the bank? A. Yes, sir.

Q. Are you familiar with the books of the bank? A. Yes.

Q. In what book of the bank would the discount of that note appear A. This was not a discount.

Q. Well, what was it? A. It was a call loan.

Q. In what book of the bank would call loans appear? A. It ought to appear on the general debits of the bank, in the first instance.

THE VICE CHANCELLOR: I call your attention to the fact that you have been talking a lot about a note, but have not offered it yet, Mr. Lane.

MR. LANE: I offer that note, if your Honor please.

BY MR. VREDENBURGH:

Q. I call your attention to this note that has just been offered, and ask you whether that was also produced by you at the trial of the case of *Richards vs. Shaw?* A. Yes, it was produced in the case.

Q. And marked as an exhibit, I see, "Exhibit A of Complainant"? A. Yes.

Q. In whose handwriting is that note, the body of it? A. In mine.

Q. And in whose handwriting is the word "Renewed"? A. Mine.

Q. And in whose handwriting is the cancellation of the stamps on the back of it? A. I think it is Mr. Denton's; I am not sure, but I think it is.

Q. And in whose handwriting is "Interest paid to December 31st, 1900"? A. Mine.

Q. And in whose handwriting is the words "Interest charged to June 30th, 1901"? A. Mine.

THE VICE CHANCELLOR: Note that there are $4.80 worth of cancelled stamps on this note.

The note is admitted without objection and is marked Exhibit C-8.

BY MR. LANE:

Q. Now, referring to the book of the bank called "General Ledger, No. 7"—can you, in that book, point out the entry of the loan to Mr. Shaw upon the note, Exhibit C-8?

MR. VREDENBURGH: I object. It seems to me these books are not evidence, and unless he made the entry himself the book cannot be evidence. And I also call attention to the fact that if one book is produced by the complainants here I think that all the books of the bank ought to be produced. When we asked for the books a few minutes ago I understood Mr. Lane to say he did not think he should introduce them, or something to that effect; I did not quite catch the words, but they were not produced.

MR. LANE: I said I would not produce them at that time.

THE VICE CHANCELLOR: Well, I will pass on one thing at a time. What have you to say, Mr. Lane, about the legality of your proving these books?

MR. LANE: I am not proving the books, if your Honor please; I am refreshing the recollection of the witness from the books of the bank.

THE VICE CHANCELLOR: Then you must change the form of your question.

Question withdrawn.

Q. Mr. Hogencamp, what was the custom of the Second National Bank with respect to keeping memorandums or entries of call loans?

MR. VREDENBURGH: I object to that as immaterial, because what their custom was cannot have any bearing here.

THE VICE CHANCELLOR: I overrule the objection.

A. They were entered originally in the General Debits, and from there posted to the General Ledger.

Q. And were all call loans treated in the same way? A. They were.

Q. Did you as President of the bank look over those books? A. Yes.

Q. As President of the bank did you have supervision over call loans A. Yes.

Q. And did you look at the items in General Ledger No. 7, the entries in General Ledger No. 7, under the heading of "Call Loans," at different times? A. I did.

Q. How often, about? A. Oh, maybe every week or two.

Q. This R. L. Shaw loan, did you pass on that? A. I did.

Q. How were the books kept on call loans then, and the system of debits and credits? A. Well, charged right into call loan account here.

Q. They charged whom? A. Charged to call loans.

Q. And credited whom? A. Credited whoever brought it in.

Q. Now, how would Call Loans get a credit? A. Call loans would get a credit when loans had been paid.

Q. And where would they appear? A. In the Call Loan book.

BY THE VICE CHANCELLOR:

Q. That is the same book that you now have before you? A. This ledger; yes, sir.

BY MR. LANE:

Q. Would it appear upon the same page, or a different page, or a different column? A. In a different column.

Q. But the same page? A. Not necessarily; it might be charged here at a certain time, and not paid for months afterwards.

Q. But whatever appeared as charged appears somewheres as paid, or it is not paid? A. Yes, sir.

Q. Were Call Loans balanced—was that account kept balanced? A. Well, no—well, it would be balanced between the debits and credits.

Q. Well, that is what I mean? A. Yes.

Q. And if there was any mistake in that balance whom would it be reported to? A. It would come to me or to the Cashier.

Q. Will the use of this book refresh your recollection as to the Shaw transaction? A. It does.

Q. Now, using that book to refresh your recollection, can you tell me when any money was advanced by the bank upon the Shaw $24,000 note?

MR. VREDENBURGH: I object to that. He cannot refresh his memory by an entry made by somebody else in the book. Nobody knows when that entry was made in the book, or nobody knows who made it, or whether it was correct at the time.

THE VICE CHANCELLOR: Is your objection that he should not use the book to refresh his recollection?

MR. VREDENBURGH: Yes, sir; it has not been shown that he kept the book.

THE VICE CHANCELLOR: How have you shown any right to have him use this book to refresh his recollection, Mr. Lane? It is not a memorandum made by him.

MR. LANE: I do not understand that the rule is that the memorandum must be made by the witness. I understand that a witness can use any memorandum, made by anybody, to refresh his recollection. I do not understand the rule to be that you must use, to refresh your recollection, memorandums made by yourself. The courts have said that the weight of the recollection, after being so refreshed, is material; but it goes, rather, to the weight of the recollection after it is refreshed. But he is not confined to using memorandums made by himself. I will ask him one more question, though:

Q. When were these items made, Mr. Hogencamp?

MR. VREDENBURGH: How does he know, your Honor? We can all guess when it was made.

THE VICE CHANCELLOR: He can ask him when they were made, and if he does not know, he will have to say so. He is under oath to tell the truth. Now, if he does not know, he has to say he does not know, and if he says they were made at such and such a time you can cross-examine him. I think,

though, the better form of question is as to whether he knows when they were made. I will overrule the question in its present form.

Q. Do you know when these entries were made in that book A. I do.

Q. When? A. July 24th, 1900.

BY THE VICE CHANCELLOR:

Q. Every item in the book was made on that date? A. Oh, no, sir.

Q. Well, I suppose there are thousands of items in that book, and he wants to know when those respective items were entered with respect to their dates; do you know? A. Not all of them.

BY MR. LANE:

Q. Well, do you know with respect to the Shaw entries? A. Yes.

BY THE VICE CHANCELLOR:

Q. Now, he does not mean what the book shows the Shaw entry to be as to date, he means do you know, irrespective of what the date is, when the entry was made? Do you know whether it was made yesterday, or the day before yesterday, or twelve years ago, or eleven years ago, or nine years ago, or when; do you know when they were made with respect to their dates?

MR. LANE: Not the date that they were made, but, with respect to their date, when were they made?

A. Well, I can swear positively that that entry was made prior to July 1st, 1901.

Q. That is not what we want at all; for instance, a newspaper which is dated to-day is published, with respect to its date, on the day that it bears date, is it not? A. Yes, sir.

Q. Now, Mr. Lane wants to know whether, with respect to the dates which appear affixed to those items there, do you know when the items were made—were they made before the date, or after the date, or on the date, or don't you know? A. Made on the date.

By Mr. Lane:

Q. By whom? A. I think it is Mr. Morrison's writing.

Q. Who was then a bookkeeper of the bank? A. A bookkeeper, John S. Morrison.

Q. Are you satisfied, Mr. Hogencamp, that at that time that book was a correct history of the transactions contained in it?

Mr. Vredenburgh: I object to that. That seems to me as not material, whether he was satisfied or not.

Mr. Lane: I think it is material. I think I have a right to ask him whether he is satisfied that that is a correct history of the transaction; and if he is so satisfied, he can refresh his recollection from it.

By the Vice Chancellor:

Q. Was it the duty of Mr. Morrison to make such entries? A. Yes, sir.

Q. How long had be been employed by the bank at that time? A. Oh, quite a number of years.

Q. Did he continue to be in the employ of the bank after that time? A. He did.

Q. Was he a competent man? A. He was.

The Vice Chancellor: I will overrule the objection.

A. I was.

BY MR. LANE:

Q. Are you so satisfied now? A. I am.

Q. Now, using that book to refresh your recollection, will you tell me at what time the moneys were advanced by the bank upon the note Exhibit 8?

MR. VREDENBURGH: May I ask him a question about that, may it please your Honor?

THE VICE CHANCELLOR: Certainly. I have not said I would admit it over your objection yet. You may cross-examine upon that, if you want to.

MR. VREDENBURGH: Well, perhaps it would save time not to ask any question until your Honor has yourself decided it.

THE VICE CHANCELLOR: But there is no objection to the question.

MR. VREDENBURGH: I object to his refreshing his memory from that book under the testimony that he has given. Mr. Carey suggests that perhaps I am premature in cross-examining him until your Honor decides it.

The question was repeated, at the direction of the Court.

THE VICE CHANCELLOR: I do not think that is a proper form of question. I shall overrule the question in that form.

Q. Using the book as a memorandum, Mr. Hogencamp, can you tell us what was done by the bank with respect to the $24,000 note, C-8, if that does refresh your recollection with respect to that? A. A loan was made on that note of $24,000 on the 24th day of July, 1900.

Q. And was that money actually advanced by the bank? A. It was.

Q. Using the book to refresh your recollection, can you tell us for what purpose the moneys advanced on that $24,000 note was used?

MR. VREDENBURGH: I object to that question.

THE VICE CHANCELLOR: Oh, yes; it is utterly immaterial what purpose it was used for. What difference does it make whether the man that got it bought an automobile with it or a thousand suits of clothes? What you mean is whom they advanced the money to, who got the money; you do not mean what they did with it after they got it; that is immaterial.

Q. Does it appear from the books of the bank how that money, the $24,000, was advanced out of the bank?

MR. VREDENBURGH: I object to that question.

THE VICE CHANCELLOR: As to whether it appears from the books of the bank?

Q. Using the books of the bank to refresh your recollection?

MR. VREDENBURGH: I object to it in that way.

MR. LANE: I will reframe the question:

Q. Using the books of the bank to refresh your recollection, can you tell me in what manner the bank advanced the $24,000?

MR. VREDENBURGH: I object to that.

THE VICE CHANCELLOR: I overrule the

objection. The answer to that is either purely yes or no. If he says no, that ends it. If he says yes, you can then find out how he has his recollection revived by looking at the book.

MR. VREDENBURGH: I did not know that your Honor had passed upon his right to use that book to refresh his memory.

THE VICE CHANCELLOR: I have not.

MR. VREDENBURGH: Now I object to his using that book to refresh his memory.

THE VICE CHANCELLOR: He is not now asked to testify as to what his refreshed memory is; he is only asking if he could use it and refresh his memory. The last question Mr. Lane got in without your objecting. As to this he is only asked whether he can or not. If he says no, that ends the whole business.

Question admitted.

A. I can.

Q. Now, tell us.

MR. VREDENBURGH: I object to that question. He cannot refresh his memory from that book, under the evidence.

THE VICE CHANCELLOR: I will overrule that objection in that form.

MR. VREDENBURGH: Well, I object to that question because it is illegal.

THE VICE CHANCELLOR: Mr. Lane, why is not the utmost right that you have, the right to find out what his recollection is after he has refreshed the said recollection? Now, you are not doing that; you are asking him to point out from the books what

they show, and I do not understand that you can do that, unless the books are evidence, and I have not ruled whether the books are evidence or not because you have not offered them; but you are now asking this witness his knowledge; now, that means that he has independent knowledge, and all that the book does is to revive, bring to life again, the knowledge which he has always had. In my view, the proper question, meeting the legal requirement, is "Please refresh your recollection respecting the person to whom that money was credited by the bank, or the person who got the benefit of that money paid out by the bank; and after having so refreshed your recollection, tell us those facts, or that fact." If you do not agree with me, do not put it in that form; I am not dictating the form, but I am only saying that some such form as that seems to me to meet the legal requirements; and unless you can convince me otherwise, I shall have to overrule the question.

MR. LANE: I shall put it in this form, if your Honor please:

Q. Refresh your recollection by the books, or from the books, and then, after having refreshed it, tell us how the money was advanced by the Bank upon this twenty-four thousand dollar note?

MR. VREDENBURGH: I object to that, because he cannot refresh his memory from that book, the book not having been written by him, or he not knowing when it was written; that it is not a proper source from which a man can refresh his memory.

THE VICE CHANCELLOR: If he has independent memory about the matter? I do not understand the rule just as you understand it. I am inclined to think that if my memory about a matter has in it evidential facts which, from the lapse of time, have become dimmed, it is proper for me to refresh my recollection from a certain kind of thing, not necessarily written by myself, or not necessarily composed by myself. Now, this gentleman may or may not have independent recollection; but if he has independent knowledge, independent recollection, outside of anything that is in this book, I am inclined to think that no rule of evidence is violated if he is permitted to revive that recollection from this book. If this witness has independent knowledge of facts which are relevant to this suit, I incline to the opinion that he may have that knowledge revived, or his recollection of it refreshed by a reference to the records kept by the proper officials of the bank at the time; and I therefore will permit this witness to consult those records for the purpose of seeing whether it refreshes his recollection. He is, after being refreshed, not to read what the record says, but he is then to testify concerning whatever personal recollection he then has which has been revived or refreshed, if he has such, by reference to these records. I will permit, Mr. Vredenburgh, a cross-examination by you now to elicit the information as to the independent knowledge that this witness has concerning the matter that he is about to testify about.

By Mr. Vredenburgh:

Q. Now, as to this $24,000 about which you are being asked, can you tell, without examining these books, whether you advanced the money on the 23rd day of July, or on the 22nd day of August, 1901? A. Yes, I can.

Q. Which was it? A. On the 24th day of July.

Q. On the 24th day of July? A. I think it was. My recollection is very distinct as to the transaction; as to a difference of a day or two in the date, that I cannot say.

Q. You have a distinct recollection that there was such a transaction? A. Yes.

Q. But what day it was you have no definite remembrance of, without examining that book? A. Well, I know it was in July.

Q. July of what year? A. 1900.

Q. How do you know that it was in July, 1900? A. Because I remember the transaction.

Q. Yes, you remember the transaction, but how do you remember the year? A. Oh, well, I remember the year; of course I remember the year. I remember when the stock was sold. I know when the stock was sold. I remember the transaction.

Q. How do you remember when the stock was sold? Was it transferred on that date? A. The certificates were handed over.

Q. Well, was the stock transferred to Mr. Denton on that date?

The Vice Chancellor: He says the certificates were handed over, if that is what you mean by "transferred."

Mr. Vredenburgh: No, I mean a transfer on the books.

Q. Was it transferred on the books to Mr. Denton on the 23rd day of July, 1900? A. No, sir.

Q. When was it transferred to him? A. Long after that.

Q. How long after? A. I don't remember.

Q. You have no recollection of when it was actually transferred to him on the books? A. I have not.

Q. Upon refreshing yourself with the books, you could testify, I suppose? A. Well, there was a great many certificates; I don't know whether I could or not.

Q. Well, by looking at the books you could tell when it was transferred on the books, couldn't you? A. The certificate book, yes.

Q. And refresh yourself on that, so you could testify it occurred on that date, just as you testify now that this $24,000 transaction was on the 23rd day of July? A. I do not understand your remark there about "refreshing myself about the stock."

Q. Is there any difference with respect to refreshing your memory with reference to the transfer of the stock by looking at the transfer books, than by refreshing your memory by looking at the book you have now in front of you, as to the $24,000 note? A. Yes, there is a great deal of difference.

Q. What is the difference? A. This was an individual one, an individual transaction. The transfers of stock were numerous, to a great many people. I couldn't tell. You know what the custom is. The stock is passed over by endorsement.

Q. How does that book refresh your memory

with regard to this $24,000 note? A. It does not refresh it at all, except possibly as to a matter of date.

Q. And as to that, you have no independent recollection about that at all? A. Well, I am satisfied that it was on the 23rd or 24th of July.

MR. VREDENBURGH: I object to the question.

THE VICE CHANCELLOR: I will permit the question.

Former question repeated as follows:

Q. Refresh your recollection from the books, or by the books, and then, after having refreshed it, tell us how the money was advanced by the bank upon this $24,000 note.

MR. VREDENBURGH: A reference to the book would not help him on that; a reference to the book only refreshes him as to the date.

THE VICE CHANCELLOR: I overrule your objection to that question. If he don't need the books, so much the better; then you have independent recollection, which certainly is evidence. If he does need the book, I rule that he may refresh his memory from the book, if it does refresh it.

A. The money was advanced to me. I got the benefit of it.

BY MR. LANE:

Q. And it was used by you in connection with the bank? A. It was.

Q. For what purpose? A. To pay off some loans that they were carrying for me.

Q. What loans? A. Loans to George Littell.

Q. Does the payment of the Littell loans at that time, July, 1900, appear upon this general ledger, pages 16 and 17?

MR. VREDENBURGH: I object to that; whether it appears in that book or not, the book is not in evidence. He is refreshing his recollection from the book as to something or other, but not as to that.

THE VICE CHANCELLOR: I sustain that objection. I do not think you have the right to indirectly get in the contents of a book that you do not take the responsibility of offering.

Q. I show you check dated July 23rd, 1900, which has as the payer W. Hogencamp, and as the payee Littell Loan Account; does that check refresh your recollection with respect to the Littell loan? A. Yes.

THE VICE CHANCELLOR: You know it is not shown that he needs to have his recollection refreshed by checks, books, &c. It may be that he does, but you have not shown yet that he needs to. From all that has already been shown it appears that he has an independent recollection of all these things.

MR. LANE: I offer this book, General Ledger No. 7, pages 16 and 17, so far as the R. L. Shaw entry, and whatever it may show with respect to the Littell loan, is concerned, in evidence.

MR. CAREY: We object to that, on the ground that this book cannot be used as evidence between the parties to this action, because it does not purport to contain

records of transactions between these parties; in the second place—

THE VICE CHANCELLOR: One minute. Is not Shaw a party?

MR. CAREY: Yes.

THE VICE CHANCELLOR: Is not the Second National Bank a party?

MR. CAREY: Yes.

THE VICE CHANCELLOR: Why does it not purport to show a transaction between the parties?

MR. CAREY: The book simply shows an entry "R. L. Shaw, $24,000," under this date; that is all.

THE VICE CHANCELLOR: That is certainly between the parties. You said it was not between the parties. You are speaking as if it was res inter alios acta; it is not; it is directly between the parties.

MR. CAREY: Well, we object because books of this kind are not admissible between the parties, under the rule.

THE VICE CHANCELLOR: That is another matter. I will hear Mr. Lane on that.

MR. LANE: I have offered the books so as to meet any question as to my good faith in offering the books.

THE VICE CHANCELLOR: Well, do you know of any legal rule which will enable me to receive the books in evidence? Have you any legal authority which would make it proper for me to admit in evidence, as against these defendants, the books kept by the bank?

MR. LANE: The only rule I know of is that where books are kept, whether they be

books of account or not, and a witness uses those books to refresh his recollection, and he testifies that he knew or was satisfied at the time they were made that they were correct, and is satisfied now that they are correct, that, besides using them to refresh his recollection, they go into evidence, as I understand the rule.

THE VICE CHANCELLOR: No, they do not go into evidence; they are simply illustrative of the witness's testimony. They may be used by the Court not as having probative force, but so that the witness's testimony may be illustrated by what he has before him, just as a diagram is used for an illustration; it has no probative force in itself, but it may be used to illustrate the witness's testimony. That is what I understand the rule to be.

MR. LANE: I offer it for that purpose, then.

THE VICE CHANCELLOR: I will admit it for that purpose. I will admit it so that we can always have this book before the court as illustrative of the witness's testimony—not as probative of what the book contains. The book need not be marked, because we can always refer to the books by their numbers.

Q. Was the $24,000 sufficient to take up all the Littell indebtedness? A. It was not.

Q. What did you do with respect to the balance? A. I gave my check for it.

Q. I show you a check, the same one that I showed you before, which has not been marked, and ask you whether that is the check which you gave for the balance? A. That is the check.

Q. Did that go to the bank? A. Yes, sir.

MR. LANE: I offer that check in evidence.

MR. VREDENBURGH: There is no objection to that, except that he has not shown what the indebtedness of Littell was yet.

The check is admitted and marked Exhibit 9 of Complainant.

Q. What do those three holes in the check indicate? A. Paid cancellation.

Q. At the time this $24,000 note was discounted by the bank what was done with the stock that you had sold to Denton? A. It was in possession of the bank.

Q. For what purpose? A. As general collateral.

Recess until 2 o'clock P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at 2 o'clock P. M.

WILLIAM HOGENCAMP, recalled.

BY MR. LANE:

Q. What afterwards happened to that stock? A. It was taken away on an order from Mr. Robert L. Shaw.

Q. I show you a paper and ask you whether that is the order that you refer to? A. Yes, sir.

Q. Is that Mr. Shaw's signature? A. Yes, sir.

Q. Do you remember who delivered that to you? A. I do not.

Q. Do you know whether it was either Denton or Shaw? A. It was either one or the other.

Q. In pursuance of that order did you do anything? A. The stock was delivered.

MR. VREDENBURGH: Are you going to offer that?

MR. LANE: Yes, I offer it now.

BY MR. VREDENBURGH:

Q. In whose handwriting is this paper now shown you, Mr. Hogencamp, except the signature? A. In mine.

Q. All of it? A. All except the signature.

Q. What was torn off the top there? A. I do not recollect now.

Q. Who tore it off? A. I do not recollect. It was a regular letter head of the bank. I do not know what shape they were in at that time.

THE VICE CHANCELLOR: Is there any objection?

MR. VREDENBURGH: No.

The paper is admitted and marked Exhibit C-10.

BY MR. LANE:

Q. Do you know what Mr. Denton did with the stock? A. Borrowed some money on it.

Q. Whom did you deliver the stock to? A. Denton.

Q. Do you know what he did with it? A. Borrowed some money onto it, or a portion of it.

Q. And what was done with the money? A. It was deposited to his account.

Q. Did you get any part of the money in the Commercial Trust Company? First, by whom was the loan made? A. The Commercial Trust Company.

Q. How much was it? A. I think it was $6,000, I am not positive.

Q. Did you get that money? A. I think I did.

Q. And did it go in your account in the bank? A. I think it did.

Q. What did you do with that $6,000? A. Used it.

Q. For what purpose? A. I do not recollect now.

Q. Well, was it spent for your benefit, or for whose benefit? A. I am not at all certain about that.

Q. Did you have an account that you carried with Denton? A. Yes, sir.

Q. In a book? A. Yes.

Q. What kind of a book? A. A regular pass book.

Q. A bank pass book? A. A bank pass book, yes.

Q. And have you that now? A. I haven't it with me; I don't know where it is.

Q. Have you tried to find it? A. I did, I tried yesterday.

Q. And can you find it? A. I failed to find it down at Deal. Mrs. Hogencamp may have possibly sent it up to Paterson along with a lot of other things.

Q. Did you make an affidavit, in the case of *Richards vs. Shaw,* with respect to that book? A. I think I did.

Q. Did you swear to an affidavit, on or about the 15th day of November, 1909, in this case? A. I think I did.

Q. Did you have before you, at the time you swore to it, that book? A. I did.

Q. Did the affidavit that you swore to at that time contain a correct transcript of the book? A. Yes.

Q. What did the book contain, that is, with respect to this transaction? A. An entry of credits and debits.

By the Vice Chancellor:

Q. As between whom? A. Denton and myself.

By Mr. Lane:

Q. Now, would a reference to that book refresh your recollection? When was that book made up, about? A. I do not remember now.

Q. Well, with respect to the entries that are in it, about what time was it made up? A. I don't know.

Q. At the time you made it up, what did you make it from? A. From the book.

Q. At the time you made the book up, I say? A. Oh, from moneys received and checks paid out.

Q. That is, the credit side showed moneys received? A. I do not recollect how the book was headed, whether it was "Hogencamp with Denton" or "Denton with Hogencamp"; that would make a difference, you know, as to which side it would be on.

Q. Well, would it be debtor and creditor? A. Debtor and creditor.

Q. And on the credit side what was carried? A. The amounts that I paid out, on the credit side of the account.

Q. As a credit to you? A. As a credit to me.

Q. And on the debit side? A. Were charges to me for moneys received.

Q. Now, did you charge yourself with this $6,000 as moneys received? A. That is my recollection of it now.

Q. Well, would a reference to the book refresh your recollection? A. It certainly would.

Q. Now, I ask you to refresh your recollection—would a reference to your affidavit refresh your recollection? A. Yes.

Q. I ask you to refresh your recollection from the affidavit sworn to on the 15th day of November, 1909, and tell me whether you did charge yourself with that $6,000 as moneys received?

MR. VREDENBURGH: I object to that. I do not want to be technical, and I am perfectly willing to use this affidavit for what it is worth; but I think the book ought to be here. There is no evidence yet that

he has lost the book, of any real importance. The book itself should be here, I think. Subject to that, I have no objection.

MR. LANE: If we had the book we, of course, would produce it. It was produced in the other case, and examined by Mr. Carey and Mr. Vredenburgh, or by Mr. Carey, rather (I don't know whether Mr. Vredenburgh saw it or not), but it was examined into by Mr. Carey, and this is a copy of the book. Now, in some way or other, that book has been mislaid and cannot be found. Mr. Hogencamp searched for it, and he cannot find it. Now, I am not putting it in evidence, but I am using the affidavit to refresh the witness's recollection. Irrespective of the book, the affidavit can be used to refresh his recollection.

MR. VREDENBURGH: The book, we think, is quite an important matter of our side, and the items in it are quite important to us, we think.

THE VICE CHANCELLOR: I will overrule that question. I will give counsel the benefit of what I have in mind. Since, as I understand your contention, the book is not evidential (and even if the book is evidential you have not laid any ground for secondary evidence, because you have not shown that the book is out of existence), but assuming that you are correct that the book is not evidential, I cannot see that whether or not he charged himself with something in that book is evidential—that is, how the fact itself can be evidential. It is immaterial, in my view, whether he

charged himself with it in a book or not, since the book is not evidential.

Q. Can you, by refreshing your recollection by that affidavit, tell us in what way you used that $6,000?

MR. VREDENBURGH: I object to that, because within the rule as laid down by your Honor with respect to reference to other papers, this is not of the character as suggested by your Honor, as sufficient to justify a reference to it to refresh the memory. Here is an affidavit made by him two or three months ago; the book is in existence; and the attempt now is to refresh his memory from an affidavit made then. It seems to me it is illegal and incompetent.

THE VICE CHANCELLOR: I will permit a yes or no answer to the question.

A. Yes.

Q. Will you refresh your recollection from the affidavit, and then tell us?

MR. VREDENBURGH: I object to that.

THE VICE CHANCELLOR: I will hear Mr. Lane.

MR. LANE: I think that if this witness had in his possession, at the time he made this affidavit, a book that refreshed his recollection at the time he went over that book and made an exact copy of the book, so far as it pertained to this transaction, and copied it in that affidavit—

THE VICE CHANCELLOR: But you have not shown that he has not a perfect independent recollection as to what he did with that money.

MR. LANE: Oh, I have, if your Honor please.

THE VICE CHANCELLOR: I have not heard him say yet that he cannot tell you, right out of his own mind, this minute, what he did with the money.

Q. Can you tell me, without refreshing your recollection from any books or papers, in what way you used this $6,000? A. Used it to pay indebtedness of Denton.

Q. Can you tell us what particular indebtedness? A. Not from recollection; no, sir; not now.

Q. You do have an independent recollection that you did use it for the purpose of paying Denton's indebtedness? A. I am sure I did.

Q. But as to the details, you cannot tell us, without refreshing your recollection? A. No, sir.

Q. Now, will you refresh your recollection from that affidavit and tell us the particular bills of Denton's or indebtedness of Denton's that you paid with that $6,000?

MR. VREDENBURGH: I object to that, unless the book is produced.

THE VICE CHANCELLOR: He does not say anything about a book now; he is asking him to refresh his recollection from an affidavit.

MR. VREDENBURGH: Well, I object to his refreshing his memory from an affidavit he made three months ago about a transaction that occurred five or six years ago.

THE VICE CHANCELLOR: (To Mr. Lane) Where do you get the right to refresh a witness's recollection from an affidavit he has made in the suit?

MR. LANE: In the first place, it is immaterial when the paper is made, so long as it is made at a time when it would appear that the witness had knowledge of what he wrote and what was written at the time. Now this witness made an affidavit at that time with respect to the contents of the book which he knew, at the time, to correctly show how he spent this money. Now, it seems to me that he may refresh his recollection from that paper, or from any paper, even if he made it yesterday.

BY THE VICE CHANCELLOR:

Q. Have you any independent recollection, outside of what was contained in that book, as to what you did with this $6,000, with respect to just whom you paid it to, and when you paid it? A. I have a distinct recollection of paying it out.

Question repeated.

A. Not the details, without refreshing myself.

Q. Then the only way in which you could tell us what you did with that money specifically would be by reading to us what was contained in the book—is that correct? A. As regards those particular items, there were seven or eight different itemized payments—

Question repeated.

A. That is true.

THE VICE CHANCELLOR: Then it appears, Mr. Lane, that that does not refresh his recollection at all. It appears now that he could only do what you or I could do, and that is, turn to the book and read it.

MR. LANE: I do not think the witness has clearly understood the question.

THE VICE CHANCELLOR: Then you can ask him some questions. Of course, in this respect, I must treat the witness in the same way I would an expert; in other words, the Court must be satisfied before the witness may be permitted to refresh his recollection, or testify about the contents of books, &c., that the legal requirements have been complied with, and you may examine him to satisfy my mind, or I may examine him myself. I have examined all I care to at present. You may examine, if you want to, along that line now.

BY MR. LANE:

Q. Do you know, generally, Mr. Hogencamp, what class of indebtedness of Denton's you paid with this money? A. Interest on bond and mortgages that he owed, that was due. I think that there may have been some taxes, but I think that was the bulk of it.

Q. And were any payments made to him direct, that you remember? A. Not that I recollect.

Q. Any notes of his paid? A. No, not that I recollect.

MR. LANE: Does your Honor overrule the question, then, that I asked?

THE VICE CHANCELLOR: I know of no rule of law which makes it proper for a witness to read over an affidavit that he has made in the suit, and then testify as to items from that affidavit.

Q. At the time that you made up this book that you testify about, did you know the pur-

poses for which you paid out these moneys? A. I did.

Q. Did you, in this book, put down those items correctly? A. I did.

Q. Did you, afterwards, upon the 22nd day of November, 1909, see that book and make an affidavit with respect to a copy of it? A. I did.

Q. And does that affidavit correctly give a copy of that book? A. It does.

Q. And are you satisfied that that affidavit, with respect to the items in the book, and with respect to the items of charge and discharge between Denton and you, is correct? A. I am sure it is correct; yes, sir.

Q. Now, you have no independent recollection, outside of the affidavit, with respect to the details at all? A. I have not.

By Mr. Vredenburgh:

Q. Does that book contain the whole account between you and Denton up to the date which purports to be the last item in the book? A. From the commencement up to the last item?

Q. Yes—the book you are talking about. A. Yes, sir.

Q. All the money that you received is in that book, is it? A. On that particular account.

Q. On what particular account? A. On the expenditure of that $6,000, and some other moneys that were turned in.

Q. Well, does that contain all the moneys that were turned in? A. Yes, sir, it was all that was turned in there.

By the Vice Chancellor:

Q. You are not answering Mr. Vredenburgh's question. What he asked you was this: Between

the dates that are in that book, does that book contain all the items of all the accounts between you and Denton? A. To the best of my recollection, yes.

Q. Then why did you keep on qualifying it? Then you now mean to say it was all the transactions between you and Denton? A. As far as I recollect it.

BY MR. LANE:

Q. Now, I ask you to refer to that affidavit and tell us, from the affidavit, what you used that $6,000 for?

BY MR. VREDENBURGH:

Q. Does the affidavit contain all the entries in the book? A. All the entries pertaining to Denton, yes.

BY THE VICE CHANCELLOR:

Q. Does the affidavit contain all the entries of all the accounts in the book between you and Denton? A. Yes.

THE VICE CHANCELLOR: Now, do you object to the question, Mr. Vredenburgh, or don't you?

MR. VREDENBURGH: I object to the question; yes, sir.

THE VICE CHANCELLOR: I shall overrule the question. The witness has distinctly stated that he has no independent recollection about the matter whatever.

MR. LANE: I understand that, and I want to be fair with your Honor. I am offering this upon an entirely different theory. I am offering it now as evidence of past recollection, not of present recollec-

tion at all. I am presupposing that the witness at the present time, on the stand, has no recollection at all with respect to the transaction, but at the time he made this affidavit he had such a recollection, and is satisfied that that memoranda showed the correct situation.

THE VICE CHANCELLOR: Does not that apply to the book itself, only?

MR. LANE: No, because it does not make any difference from what source or how long it is carried down; and I am offering the affidavit as evidence of the witness's past recollection.

THE VICE CHANCELLOR: I overrule that offer.

Q. I show you checks, all signed by W. Hogencamp, dated as follows: August 30, 1901, to Henry M. Denton, for $247.50; August 26, 1901, to William H. Redfield, for $1,000; August 20, 1901, to William H. Redfield, for $275; August 16, 1901, to William H. Redfield, for $577.45, on the face of which appear the words "Account of H. M. Denton, bond and mortgage, Guarantee Company, $337.50, August 23, 1901," signed "Hogencamp"; August 28th, 1901, to George R. Bruce, Esq., attorney, for $875; August 20th, 1901, to William H. Redfield, for $409.63, to which is attached some interest receipts; November 13, 1901, to Henry M. Denton, for $967.50; August 21, 1901, to "Balance of interest on Redfield Mortgage," for $24.65; August 23rd, 1901, to William Hogencamp, for $1674.88, to which is attached a note; I ask you whether, attached to that note is the signature of Henry M. Denton? A. It is.

Q. Check, October 29, 1901, to Henry M. Den-

ton, for $250; October 18, 1901, check to Henry M. Denton for $105; October 10, 1901, check to Henry M. Denton for $320; September 27, 1901, check to Thomas O'Callaghan, Jr., for $53.88; October 21, 1901, check to Henry M. Denton for $1013.89; November 1, 1901, check to Henry M. Denton for $1012.50; September 18, 1901, check to Henry M. Denton for $200; September 17, 1901, check to Henry M. Denton for $21; September 17, 1901, check to Account H. M. Denton, Sundries, for $87.32; September 5, 1901, check to Thos. O'Callaghan, Jr., for $150—all of those checks being signed "W. Hogencamp": Were those checks all signed by you? A. They were.

Q. Those checks which are drawn to Henry M. Denton, are the endorsements on the back the endorsements of Henry M. Denton? A. Yes, sir.

Q. What do those checks represent? A. Moneys paid out by me for his account.

Q. And included in the moneys paid out by these checks, can you tell us whether this $6,000 is included? A. It is.

Q. And other moneys? A. And other moneys.

MR. LANE: I offer the checks in evidence.

The checks are admitted in evidence without objection, and are marked as offered, the first one dated August 30th, 1901, being marked Exhibit 11-A, and the others with the successive letters of the alphabet, without the "Exhibit 11" being repeated on each check, from B to T inclusive.

Q. This one check J (showing the witness the check referred to), drawn to your order, for $1674.88, can you tell us what that check was

for? A. To take up a note of Henry M. Denton, of $1670.21, and interest.

Q. And that is the note which is attached to the check? A. Yes, sir.

MR. LANE: I offer that note in evidence.

The note is admitted without objection and is marked Exhibit C-12. The date of the note is August 6, 1901, and is for $1670.21, with interest, due on demand. The note is from Denton to W. Hogencamp; paid August 23, 1901, by the check of $1674.88.

Q. Now, Mr. Hogencamp, do you remember how long the loan of the Commercial Trust Company ran on this stock—I mean the loan that Denton got of the Commercial Trust Company on the stock? A. I do not.

Q. Do you remember when it was paid off? A. I do not.

Q. Do you remember that it was paid off? A. I remember that; yes, sir.

Q. I show you a check, Henry M. Denton to the Commercial Trust Company, dated May 1st, 1902, for $6,067, and ask you whether a reference to that check will refresh your recollection as to when that loan at the Commercial Trust was paid off? A. May 1st, 1902.

Q. Is that the check that was used to pay that money off? A. Well, it may have been within a day or two—

Q. Was that the check used to pay off that loan? A. Yes, sir.

MR. VREDENBURGH: I object to that question. This witness cannot know whether it is or not. It is not his check.

THE VICE CHANCELLOR: Well, but your objection comes too late, doesn't it?

MR. VREDENBURGH: Perhaps it does, sir. It don't make any difference. I won't take the time up with it.

MR. LANE: I offer that check in evidence.

The check is admitted in evidence without objection, and is marked Exhibit C-13. It is a check drawn to the Commercial Trust Company, for $6067, dated May 1, 1902.

Q. Do you know, Mr. Hogencamp, where Denton got the moneys upon which he drew this check of $6067? A. Yes.

Q. Where? A. At the Trust Company in Hoboken.

Q. Upon what, do you know? A. 100 shares of Second National Bank stock.

Q. Do you remember what the amount of that loan was? A. $13,000.

Q. What did he do with the moneys, do you know?

MR. VREDENBURGH: By "the moneys" you mean the $13,000?

MR. LANE: Yes, that he got from the Hudson Trust.

Q. Do you know what happened to that money? A. It was deposited in the Second National Bank, Jersey City, to his credit.

Q. And was it upon that credit that this check of $6067 was drawn? A. It was.

Q. I show you a check dated May 1st, 1902, for $7255, signed Henry M. Denton, drawn to the

order of John J. McKelvey. Is that Mr. Denton's signature on that check? A. It is.

Q. Can you tell me on what account that was drawn? A. Upon his account.

Q. And out of what moneys it was paid?

MR. VREDENBURGH: I object to that.

THE VICE CHANCELLOR: The question is whether he can tell or not. There can be no objection to whether he can tell or not.

A. Yes, I know.

Q. And upon what moneys was it drawn? A. The deposit of that money received from Hoboken, that went to his credit.

BY MR. VREDENBURGH:

Q. Do you mean to say that there was no other money used to pay that check except the money from Hoboken? A. Well, there was $13,000 got in Hoboken; $6,000 of it went down here, and $7000 and some odd dollars his account was good for.

Q. What you mean is that the two would make that amount, $13,000, but you do not mean to say that the money that went in the bank was the same money that came out, this $13,000—in other words, Mr. Denton may have had other money in the bank? A. Well, he didn't.

Q. He did not have any money? A. Well, he may have had a small amount, but I remember the transaction perfectly.

The check of May 1st, 1902, just identified by the witness is offered in evidence by Mr. Lane, admitted without objection, and is marked Exhibit C-14.

By Mr. Lane:

Q. Will you turn to Mr. Henry M. Denton's account? A. I have done so. (Referring to Individual Ledger of Second National Bank, No. 17, A to L, and looking at page 388.)

Q. What does that page show, generally? A. An account of Denton with the Second National Bank.

By the Vice Chancellor:

Q. The moneys which they credit him with, and the charges that they make against him, or withdrawals? A. Yes.

By Mr. Lane:

Q. Is that the only account that he had in the bank in the name of Henry M. Denton? A. I think it was.

By Mr. Vredenburgh:

Q. Well, under anything? A. Or anything.

By Mr. Lane:

Q. Who keeps that account? A. That was the individual A to L bookkeeper.

Q. And is that account balanced at different times? A. Yes, sir.

Q. And the pass book sent out to the depositor? A. Yes, sir.

Q. Has this account been balanced? A. Yes, sir.

Q. To what date was it balanced? A. July 17, 1902.

Q. And the pass book sent out to the depositor? A. Yes, sir.

Q. Are you satisfied that that account is a correct account of the moneys credited to and paid out of the account? A. I am.

Q. Referring to that account, can you find the credit of the moneys paid by the Hudson Trust Company upon the loan of the stock? A. I see a credit here. That is the credit (indicating an entry in the account). I may have been mistaken as to the amount. I thought it was $13,000. It may have been $13,500, but I am not sure; I know it was $13,000.

Q. Is that the credit of May 2d, 1902? A. Yes, sir.

Q. Now, can you find there in that account, on the other side, the $6,067 check, and the $7255? A. Yes.

Q. Now will you tell us, by reference to the account, whether at the time those two checks were paid there was sufficient moneys to pay them in the bank, without that $13,000? A. There was not.

Q. Or anywhere near that? A. No, sir.

BY THE VICE CHANCELLOR:

Q. Mr. Lane asked you awhile ago whether you could pick out from this account that is in front of you any item which showed moneys received from the Hoboken Trust Company, and you selected the item of May 2d, 1902—there is nothing in the book to show what that was at all, is there? A. No, not in here.

Q. And therefore, your knowledge concerning the source of that money must be something entirely outside of this book, is not that so? A. Yes.

Q. And so far as it appears in this book, that might have been money derived from some other source, of money which the bank loaned to him upon notes, or something of that sort, may it not? A. Yes, sir.

Q. Now, do I understand you to say that you have an independent personal knowledge of the fact that on the 2nd of May, 1902, Mr. Denton deposited, in the Second National Bank of Jersey City, $13,500 of money which he had secured from the Hoboken Trust Company upon a loan made by that company to him? A. Yes, sir; I know it.

By Mr. Lane:

Q. Now, was any part of those moneys used for your benefit? A. There was that one check in payment of the note.

Q. That is, the $6,000, you mean? A. Yes.

Q. Was any other of those moneys used for your benefit at all? A. No, sir.

Q. The loan of the Hudson Trust Company, was that paid off? A. Eventually, yes, sir.

Q. With whose money? A. I borrowed the money elsewhere and paid it.

Q. Did you take the stock then? A. Yes, sir.

Q. How long did you hold the stock? A. Oh, several years.

Q. Did you have any paper from Mr. Denton, any power of attorney, or anything of that sort? A. The stock was endorsed—the power of attorney was endorsed on the back of it.

Q. What kind of a power of attorney was that? A. A power of attorney to "sell, transfer and assign to."

Q. How did you come to take the stock up in the Hudson Trust Company? A. They wanted the loan paid.

Q. Well, why did not Denton pay it? A. He did not have the money.

Q. Did you have any conversation with him with respect to paying the loan? A. I did.

Q. What was that conversation? A. That I should take up the loan to prevent the stock from being sacrificed.

Q. Now, you afterward sold this stock, did you? A. Yes, sir.

Q. Can you remember the date? A. It was in 1905, somewheres.

Q. Did you talk to Denton before you sold it? A. I told him I was going to sell it, that I was going to sell out all my stock.

Q. What did he say? A. He did not object to it.

Q. Do you remember what you got for it? A. $190, net, per share.

Q. That is $19,000? A. Yes, sir.

Q. What did you do with that $19,000? A. I paid off the loan, and the balance of it I credited on another note that he owed me individually.

Q. I show you a note, dated July 19, 1901, for $13,000, on demand, payable to the order of himself, purporting to be signed by Henry M. Denton —is that his signature? A. Yes, sir.

Q. Is it endorsed by him? A. Yes, sir.

Q. Is that the note to which you refer? A. Yes, sir.

Q. How did that note come to be given to you? A. I gave him the money for it, or, rather, I credited it to his account in the Second National Bank.

Q. I show you a check dated July 19, 1901, drawn by William Hogencamp, to the order of Henry M. Denton, for $13,000? A. Yes, sir.

Q. And I ask you whether that check is the check that you gave for this note? A. It is.

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Q. On the back of this note appear the words "Credit, Sept. 7, 1905, $7652.80"—is that credit in your handwriting? A. It is.

Q. That "$7652.80," what does that represent? A. The balance of the sale of the stock, and what I had to pay for it, and the settlement of interest.

Q. How did you come to advance this $13,000 to Mr. Denton? A. His account in the Second National Bank was overdrawn.

Q. Has he paid any part of this note? A. Only by that credit.

Q. Did he state, before this stock was sold, or after it was sold, to what account this credit should be made? A. He did not.

Q. And did you apply it to this note? A. I did.

MR. LANE: I offer that note in evidence and also the check.

BY MR. VREDENBURGH:

Q. This note of July 19, 1901, which you now produce, Mr. Hogencamp, in whose handwriting is it? A. Mine.

Q. How did it happen that there were no stamps on it? A. I don't know whether the Stamp Law was in force then or not.

Q. You do not remember whether it was in force? A. No, I do not.

Q. I noticed a stamp was on the other note? A. Well, that was dated a year previous.

Q. That is the reason there was no stamps on there, because the Stamp Law was not in force? A. The Stamp Law was not in force; that is my recollection of it.

MR. VREDENBURGH: I do not object to

them, except that, if we find that the Stamp Act was in force on that date, I object to it then.

THE VICE CHANCELLOR: You will have to make your objection to it now. I cannot hold it in the air.

MR. VREDENBURGH: Well, I object to them, on the ground that they are not stamped.

THE VICE CHANCELLOR: Well, was the Stamp Law in force then, or not?

MR. LANE: I do not think it was, sir, although I do not know. I have one check of August 22nd, 1901, that went through the bank, not stamped; so I imagine the law was not in force, or they would not put the check through the bank then without a stamp, if the law was in force then.

THE VICE CHANCELLOR: I do not know, of course, when it went out.

MR. LANE: I do not know that it goes to this, even if the Stamp Law was in force, or not, because we are not seeking to recover on this obligation at all.

THE VICE CHANCELLOR: I will overrule the objection and admit the papers.

The note is marked Exhibit C-15, and the check, Exhibit C-16; the note, Exhibit C-15, being dated July 19, 1901, and is a note of Denton to himself for $13,000, on demand, dated July 19, 1901, with interest. It bears the endorsement of Henry M. Denton, and two memorandums, one in pencil and one in ink. The ink memorandum reads, "Interest paid to August 6th, 1901," and underneath that, in pencil, "Credit Sept. 7, 1905,

$7652.80." The check, Exhibit C-16, is dated July 19, 1901, and is from Hogencamp to Denton, for $13,000, and is endorsed by Denton.

BY THE VICE CHANCELLOR:

Q. Wasn't it the custom of the Second National Bank of Jersey City to indicate in some way that a check had been paid other than by these three holes punched through them? A. No, sir.

Q. There was no stamp put on them to show that they were paid? A. No, sir.

BY MR. VREDENBURGH:

Q. This note bears no evidence that it was discounted in the bank? A. It was not discounted in the bank.

BY MR. LANE:

Q. Will you turn to the account of Mr. Denton, and show us, if you can, the deposit of that $13,000? A. (The witness complies by pointing to the second column, under date of July 20th, 1901, on page 388, and to an item which has no notation in front of it, but after the date has "$13,000." He identifies that as the money represented by the check, Exhibit 16.)

Q. Now, Mr. Hogencamp, when the stock was taken out of the Second National Bank, in pursuance of the order, Exhibit 10—

MR. VREDENBURGH: I object. There is no evidence that it was taken out of the bank in pursuance of that order.

THE VICE CHANCELLOR: Well, it is practically so; he says that in pursuance of that order he gave the stock to Denton, so, in that sense, it was taken out of the pos-

session and custody of the bank. I overrule that objection.

Q. Now, Mr. Hogencamp, when the stock was taken out of the Second National Bank in pursuance of order, Exhibit 10, did you have in your possession Exhibit 1, the bond and mortgage? A. Yes, sir.

MR. VREDENBURGH: I object, may it please your Honor.

THE VICE CHANCELLOR: He testified that he did not know who brougnt him that order, that one or the other brought it to him; but that he delivered the stock to Denton; and then, he said, Denton took it down to the Commercial Trust Company and got a loan on it, and subsequently took the whole one hundred shares over to the Hoboken Trust Company and got a loan over there.

MR. VREDENBURGH: Yes, but the trouble is that I understood him to say that at that time it was his stock.

THE VICE CHANCELLOR: What of it? He has not said whose stock it was in this question; he merely says "what physically became of it at a certain time?" Now, it certainly was taken out of the bank, in the sense that Mr. Lane was using it, because at that time this gentleman testifies it was in the bank as collateral. Now, he says some one came along with this order from Shaw to him, and as the result of that he gave the stock to Denton. In that sense it was taken out of the bank. I overrule the objection.

Q. You had in your possession that mortgage, you say? A. Yes, sir.

Q. Did you have any other mortgage in your possession at that time?

THE VICE CHANCELLOR: Or anybody else's, do you mean?

Q. In reference to this transaction, had you any other mortgages in your possession than this mortgage of Denton to you? A. I had.

Q. And was that mortgage known as the Hanford Mortgage? A. Yes, sir.

Q. I show you a bond and mortgage, Hanford to Denton, and an assignment of that mortgage to Hogencamp, and ask you whether those are the papers that you had at that time? A. Yes, sir.

Q. Was that mortgage on what is called the Shaw property? A. Yes, sir.

Q. On what interest in it? A. It was a mortgage—

Q. Was it a whole or a half? A. It was either a half or a third.

THE VICE CHANCELLOR: Oh, it will speak for itself; if it does not speak for itself, I do not see how this gentleman can get the right to testify about it.

MR. LANE: Well, I am trying to get it in the record. I know that if the people on the other side want me to prove it strictly, I will have to do it in a different way.

THE VICE CHANCELLOR: Do you offer these papers?

MR. LANE: I offer these papers.

The papers, three in number, are admitted without objection. The first is a mortgage made by Frank Hanford and wife to

Henry M. Denton, dated January 16, 1895, for $12,000, recorded on the 17th day of January, 1895; the bond accompanying the said mortgage; and an assignment of the said mortgage, dated September 1, 1900, from Henry M. Denton to Hogencamp, reciting a consideration of $12,000, recorded on the 21st day of August, 1901. The bond and mortgage are each marked Exhibit C-17, and the Assignment, Exhibit C-18.

Q. Now, Mr. Hogencamp, at the time the stock was taken from the Bank in August, 1901, what, if anything, did you do with respect to the mortgage, Denton to Hogencamp, and with respect to the assignment, Denton to Hogencamp? A. I had the mortgage, Denton to Hogencamp, recorded on the 22d of August, 1901.

By the Vice Chancellor:

Q. And what about the assignment from Denton to Hogencamp, Exhibit 18—what did you do with respect to that? A. I had it recorded.

By Mr. Lane:

Q. Now, those mortgages had been left there before that time by whom? A. Mr. Denton.

Q. For what purpose? A. General collateral.

Q. What did you do with respect to applying that collateral when the stock was taken down? A. The collateral was turned over more especially to the Shaw notes.

Q. The twenty-four thousand dollar Shaw notes? A. The twenty-four thousand dollar Shaw notes.

Q. In August, 1902, was there any change made with respect to the form of the Shaw indebtedness? A. There was.

Q. What was that change? A. A new mortgage was given by Shaw on the whole property.

Q. Well what was the change made in the form of the indebtedness, now—not in the form of the collateral? A. Why, it was—I don't know as I understand that directly.

Q. Was there any more money advanced to Shaw? A. I don't know whether there was at that time, or not. There was a thousand dollars advanced to him about that time; whether that was the exact time or not I do not recollect.

Q. Well, was the thousand dollars advanced at the time the new mortgage was made by Shaw? A. I think it was.

Q. Now, I show you note dated August 27, 1902, for $13,000, payable on demand, signed by R. L. Shaw, and ask you whether you recognize that signature? A. I do.

Q. Whose is it? A. Robert L. Shaw's.

Q. Do you recognize the endorsement? A. Yes, sir.

Q. Whose is that? A. Robert L. Shaw's.

Q. What was this note used for? A. Collateral to that loan.

Q. What was it used for at that time, I mean, with respect to the pre-existing Shaw indebtedness?

MR. VREDENBURGH: It seems to me that is not material; we are not after that note now, we are after the $12,000 note.

MR. LANE: Both of them are tied up together; we cannot get one without the other.

Objection overruled. Question repeated.

By the Vice Chancellor:

Q. In other words, when Mr. Shaw gave that note to the Bank at that time, did they advance him $13,000 on it? A. It was given to take up another—

Q. Answer my question. A. No.

Q. What did they do? A. It provided for a twelve thousand dollar note, as I recollect it, and a thousand dollars advanced for the stable purposes.

Q. Then the form of the Shaw indebtedness had changed before this time, had it? A. It had changed, yes; it was twelve thousand originally.

Q. But it was not according to the testimony before me; it was twenty-four thousand. The only evidence I have had of any indebtedness of Shaw to the Bank was one solid note for twenty-four thousand dollars; now, if that was changed before this time, you are right in saying so; if it was not changed until this time, then say so. A. The amount of twenty-four thousand dollars is correct, but I am not prepared now to say whether it was one note for twenty-four thousand dollars, or two notes of twelve thousand dollars; that I don't recollect.

By Mr. Lane:

Q. Whatever it was, this note was to take up twelve thousand dollars of that indebtedness, was it? A. Yes.

Q. And the one thousand dollars advanced to Shaw? A. Yes, sir.

Mr. Lane: I offer that note in evidence.

The note is admitted, without objection,

and is marked Exhibit C-19, being a note made by R. L. Shaw to "Myself" for $13,000, dated August 27, 1902, payable at Second National Bank of Jersey City, on demand, with interest.

Q. Did that note go through the Bank, Mr. Hogencamp? A. Yes.

Q. Can you tell when? A. About the time of the date of it.

Q. Can you refer to the General Ledger—

MR. VREDENBURGH: I object to his tracing that note any further. It is not material to this case, your Honor. You have ruled upon it so far as it was material in dividing up the twenty-four thousand dollars; but why should we go further with it?

THE VICE CHANCELLOR: Why is not that so, Mr. Lane? Why am I concerned with what happened with that other note?

MR. LANE: Because we all know that it did not go through the Bank at all, as to that note.

THE VICE CHANCELLOR: Then I overrule the objection.

MR. LANE: Let me be certain. (After inspecting the Ledger) I see here, your Honor, that it is here in two items. I do not want to mislead the Court.

THE VICE CHANCELLOR: I overrule the question then. I do not see that we are at all concerned with the thirteen thousand dollar note.

Q. How was the remaining twelve thousand dollars of the twenty-four thousand dollars taken

care of? A. By a new note for twelve thousand dollars.

Q. Signed by whom? A. R. L. Shaw.

Q. And endorsed by whom? A. And endorsed by R. L. Shaw.

Q. And did that note go through the bank? A. It did.

Q. Will you turn to the General Ledger and tell me whether you can refresh your recollection as to when it went through?

MR. VREDENBURGH: Don't you produce that note?

MR. LANE: No, I do not, because I have not got it.

THE VICE CHANCELLOR: You have got to produce the note, haven't you, or account for its absence?

MR. LANE: I will have to withdraw Mr. Hogencamp from the stand, and go on the stand and testify that that note has been mislaid; but it was read into the record in the other case, so there is no question about the form of it, or what it was.

MR. VREDENBURGH: I object to that, if your Honor please. I don't know anything about the form of that note. It should be produced.

THE VICE CHANCELLOR: Oh, yes, clearly so. I do not think I ought to permit you, in view of Mr. Vredenburgh's objection, to talk about the existence of a note of which there is no evidence of its destruction, or, if it is in existence, why it should not be produced. That is antecedent, I under-

stand, at the very basis of your suit here now, is it not?

MR. LANE: Yes, it is the last form that that indebtedness, secured by this mortgage, took.

THE VICE CHANCELLOR: Then it is important, and if Mr. Vredenburgh insists, you will have to either produce the best evidence, or account for the absence of the best evidence, and then produce secondary evidence.

MR. LANE: Then I will have to withdraw Mr. Hogencamp, and go on the stand myself.

MERRITT LANE, ESQ., sworn.

THE WITNESS: I had charge of this case from the time the application was made for a rehearing in the case of *Richards vs. Shaw,* and I had in my possession and used before Vice Chancellor Garrison several times a note, the companion of the note that I hold in my hand, and which note was offered in evidence in the case of *Richards vs. Shaw.* It was a companion of the note Exhibit C-19 in this suit, except with respect to date and amount; the date was different and the amount was different. The date was June 20th, 1902, or my recollection is that it was June 20th, 1902; and the amount was twelve thousand dollars rather than thirteen thousand. That note was used in the other case, and was marked G. W. B, 2," and referred to throughout the hearing in the other case as G. W. B, 2.

THE VICE CHANCELLOR: In the minutes of the hearing of the case of *Leonard Rich-*

ards vs. Robert L. Shaw, which the Court has before it, on pages 73, 74, 75, 76 and 77, the question of this note was dealt with. From the minutes it appears that a note was shown to the witness Shaw, dated June 30, 1902, for $12,000, which he acknowledged that he had signed and endorsed, and it was marked for identification in that suit G. W. B., 2.

THE WITNESS: All the papers were together, and when they were used at different places they were taken apart, and it was not until Saturday of this week that I ascertained that I did not have G. W. B., 2. I made search through all of the papers, and searched wherever I thought the note could be. I cannot find the note; it has been misplaced somewhere. I have a distinct recollection as to the general form of the note.

CROSS EXAMINATION BY MR. VREDENBURGH:

Q. Where did you last see the note, Mr. Lane? A. My recollection is that I last saw it at or about the time the case was argued before Vice Chancellor Garrison in his Chambers.

Q. You had it there then, did you? A. Oh, it was there before the Court then, at that time.

Q. Well, was it used there? A. Yes, it was used there.

Q. And that is the last you saw of it? A. The last I saw of it. It was not left there. No exhibits were left that—that is, intentionally. My recollection is, and, as a matter of fact, I will go further than that: I must have seen it after that, because I prepared my brief after that, and I used it in the preparation of the brief.

Q. You did have it after then, did you? A. I

must have had it, because I prepared the brief after the last argument, and you will find the details of the note set forth in full in the brief.

Q. You have talked this matter over with Mr. Hogencamp, have you not? A. Yes, certainly.

Q. And he has looked over these different checks and notes to identify them, has he not? A. Certainly.

Q. He has had possession of this note, has he not? A. I don't know about that; I do not know of any reason why Mr. Hogencamp should have possession of this particular note.

Q. Any more than any other note? A. Well, the reason I make that distinction is because I know that Mr. Hogencamp did have possession of the book which was referred to previously by Mr. Hogencamp, but that was a memorandum made by himself, and he wanted to look over it, so he had possession of that; but there was no reason why he should have possession of this note.

Q. You refer to the book which is also lost? A. I refer to the book which cannot be found.

WM. HOGENCAMP, recalled.

BY MR. LANE:

Q. Now, I will ask you whether, by reference to the General Ledger, Call Loans Account, you can refresh your recollection and tell us when this twelve thousand dollar note went through the bank?

MR. VREDENBURGH: I object, may it please your Honor; it seems to me there has not been sufficient proof to justify the witness's testifying as to that note; there has not been sufficient proof that they have lost it.

THE VICE CHANCELLOR: I overrule that objection. It actually was produced before me, and inspected by me, and marked in that suit, and the note of the fact that it did exist on my minutes of that trial convinces me that I personally inspected it and saw it, and Mr. Lane says he has lost it, and I am satisfied that it is proper to admit secondary evidence.

Question repeated.

MR. VREDENBURGH: I object to that; how can he do that?

THE VICE CHANCELLOR: I will permit a yes or no answer.

A. No, I cannot remember the exact date.

Q. Do you remember about what time? A. The time of the date of the note.

Q. That is, the time of the date of C, 19 (showing the witness Exhibit C-19)? A. Yes, sir; about the time of the date of C-19.

THE VICE CHANCELLOR: C-19 is dated August 27, 1902.

Q. Now, the note for twelve thousand dollars, Mr. Hogencamp, is dated June 30, 1912 (that is, Shaw's note for twelve thousand dollars), and the note for thirteen thousand dollars, making up the twenty-five thousand, is dated August 27, 1902: Can you tell me why there was a difference made in the dates, one being dated June 30, and the other being dated August 27th? A. No, I cannot.

Q. There was a difference made between the dates, wasn't there?

THE VICE CHANCELLOR: Oh, well, do not ask him that; I know that June 30th is a different date from August 27th.

Q. Well, those two notes of June 30th, 1902 and August 27th, 1902, one for twelve thousand and the other for thirteen thousand dollars, were to take up the twenty-five thousand dollar Shaw indebtedness, was it not?

MR. VREDENBURGH: I object to that as leading.

THE VICE CHANCELLOR: Well, yes, and on another ground—there is nothing to show that at that time Shaw owed twenty-five thousand dollars.

Q. At that time, on August 27th, 1902, had the Shaw twenty-four thousand dollars been paid? A. No, sir.

Q. Was it still due? A. It was.

Q. And how was it taken up? A. By these two notes.

Q. That is, referring to the two that have already been referred to? A. Yes, sir.

By The Vice Chancellor:

Q. The twelve thousand dollar note of June 30th, and the thirteen thousand dollar note of August 27th, 1902—is that what you mean? A. Yes, sir.

Q. Was the Shaw indebtedness increased from twenty-four to twenty-five thousand? A. It was.

Q. How? A. By increasing the amount of the loan, or loans.

By The Vice Chancellor:

Q. Well, how did he come to owe you another thousand dollars—did you sell him a horse, or did he borrow the money, or what? A. The amount of loan was increased to let him have money to fix up his stable.

Q. Shaw borrowed a thousand dollars? A. Borrowed a thousand dollars; yes, sir.

By Mr. Lane:

Q. Now, at that time, on August 27th, 1902, was the collateral again changed? A. Yes.

Q. In what way? A. The mortgages were specifically put against the amount of the indebtedness, and the stock released.

Q. I am talking about August 27th, 1902, now. A. 1902?

Q. Yes,—was there any other mortgage given? A. Oh, there was a mortgage given on the stable property by Shaw, on the whole property instead of the one-half or the one-third as it was before under Hanford.

Q. I show you a mortgage, and ask you whether that is the mortgage? A. Yes, sir; that is the mortgage.

BY THE VICE CHANCELLOR:

Q. The mortgage which you say was given as additional collateral? A. Yes, sir, on account of the increasing of the amount.

MR. LANE: I offer that mortgage in evidence.

(The mortgage is admitted without objection, and is marked Exhibit C-20; it is a mortgage, Robert L. Shaw to William Hogencamp, dated August 27, 1902, for thirteen thousand dollars, recorded April 26, 1904, in Hudson County Register's Office, in Book 517 of Mortgages, page 406).

BY MR. LANE:

Q. That mortgage is drawn to you—how did you take it? A. In trust for the bank.

Q. Is there any reason why the mortgage should be made to you rather than to the bank? A. Well, it was the custom of the bank not to have themselves appear as the mortgagee.

Q. Wasn't there a banking law against it, Mr. Hogencamp? A. Well, they couldn't take it direct; the bank couldn't take a mortgage directly, they could take it indirectly.

Q. And that was the indirect way of doing it? A. That was the indirect way of doing it.

MR. VREDENBURGH: I did not understand one answer of Mr. Hogencamp's.

BY MR. VREDENBURGH:

Q. Did you say that the bank advanced a thousand dollars more to Shaw, which increased it, or was the reason of increasing it from twelve to thirteen thousand dollars? A. I did.

THE VICE CHANCELLOR: Now he says it, but he did not say it before.

BY MR. LANE:

Q. When you left the bank were the mortgages, Shaw to Hogencamp, Denton to Hogencamp, the notes for thirteen thousand and twelve thousand dollars of Shaw's in your possession? In what capacity were they in your possession?

MR. VREDENBURGH: I object; it is not material, when he left the bank, what was done with the Shaw notes. That is out of the case, as I understand it. His question now extends to this Shaw mortgage.

Objection overruled.

A. As President of the Second National Bank.

THE VICE CHANCELLOR: I do not know what you mean Mr. Lane by "when you left the bank." Do you mean when he left, or after he left?

Q. At the time you left the bank? When was it? A. In 1906.

Q. And these mortgages that have been referred to in my last question were then in your possession as President of the bank? A. Yes, sir.

THE VICE CHANCELLOR: Do you mean after he left?

MR. LANE: At the time he left, on the day he left.

THE VICE CHANCELLOR: Did he take them with him?

MR. LANE: No, no.

THE VICE CHANCELLOR: You mean, then, up to the time he left?

MR. LANE: Up to the time.

BY THE VICE CHANCELLOR:

Q. Up to the time you left, the two notes that have been specifically referred to and the two mortgages that have been specifically referred to by Mr. Lane in his previous questions, were in your possession, you say, as trustee of the bank, as collateral for money which the bank had loaned to persons; is that it? A. Yes, sir.

BY MR. LANE:

Q. Now, when you assigned the mortgage, Denton to Hogencamp, did you assign it as trustee for the bank? A. Yes, sir.

MR. VREDENBURGH: Is not that leading?

THE VICE CHANCELLOR: Yes.

Q. Then, in what capacity did you assign it? A. As President of the bank, to the bank.

THE VICE CHANCELLOR: Now, that assignment we have not got, Mr. Lane.

Q. Well, what do you mean by "to the bank" —do you mean to somebody for the bank, or to the bank itself direct? A. Well, it was turned over to the bank, to the Second National Bank.

Q. Well, do you remember how the assignment itself ran? A. I do not.

Q. What you mean is that you turned the papers over to—

MR. VREDENBURGH: I object to what he means.

Objection sustained.

Q. Whom did you turn the physical possession of the papers over to? A. I think to my successor.

Q. Who was what of the bank? A. I think they were turned over to the bank.

By The Vice Chancellor:

Q. But you said to "your successor", he wants to know what your successor had to do with the bank—what was he, an office boy, janitor, or what? A. President.

Q. And what was his name? A. Mr. Hanley.

The Vice Chancellor: Now, we have not any record of anything that was ever assigned to Mr. Hanley.

Mr. Lane: Oh, no; the physical possession I am talking about. There was not any assignment to Mr. Hanley. I am talking about the physical possession.

By Mr. Lane:

Q. Did you, at any time after that, get the mortgages and notes for yourself? A. No, sir.

Recess until Thursday, September 15, 1910 at ten o'clock, A. M.

Jersey City, N. J., September 15, 1910.

Hearing of the cause resumed at ten o'clock, A. M.

MR. LANE: May I ask leave, your Honor, to produce the cashier of the Hudson Trust Company, who has been here all day yesterday?

THE VICE CHANCELLOR: Yes, you may do so.

JAS. N. P. REILLY, sworn.

DIRECT EXAMINATION BY MR. LANE:

Q. Your residence is where? A. Hoboken, N. J.

Q. Are you an officer of the Hudson Trust Company? A. Secretary.

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

Q. You have a book there, what is it? A. It is a collateral loan book.

Q. Did you make entries in that book yourself? A. I did.

Q. Have you an item in there of Henry M. Denton? A. We have.

Q. Did you make it? A. I did.

Q. When with respect to the time of the transaction to which it relates? When did you make the entry, with respect to its date? A. May 2, 1902.

BY THE VICE CHANCELLOR:

Q. When did you make the entry with respect to its date—did you make it the same day, or a year afterwards? A. The same day.

By Mr. Lane:

Q. Did you have personal knowledge of the transaction? A. Yes.

Q. What does that item show with respect to a loan to Henry M. Denton? A. On May 2d, 1902, we made a loan to Henry M. Denton on a collateral note for four months, amounting to $13,500, secured by 100 shares of the Second National Bank of Jersey City stock.

Q. And how much money did Denton get? A $13,500.

Cross Examination By Mr. Vredenburgh:

Q. You stated that you had personal knowledge of the transaction—will you state what your knowledge of it is? A. As I recollect, Mr. Denton produced the 100 shares of the Second National Bank of Jersey City stock, and we agreed to make him a loan.

Q. Was Mr. Tierney there? A. I believe he was there at the time; yes, sir.

Q. And he passed on the loan? A. Yes.

Q. Do you recollect what he said the stock was worth?

Mr. Lane: I object to that as not proper cross-examination, and immaterial.

The Vice Chancellor: I overrule the objection. The man having said he had personal knowledge, why cannot Mr. Vredenburgh bring out what his personal knowledge is of what took place?

Mr. Lane: That is not the purpose of the testimony as I see it. If it is simply for the purpose of testing the witness's personal knowledge, that is another matter; but it is offered for an entirely different purpose, as I conceive it.

THE VICE CHANCELLOR: What difference can it make what you conceive about it? You having asked the witness whether he had personal knowledge of the transaction, why is not Mr. Vredenburgh entitled to find out what his personal knowledge is? Suppose his personal knowledge turns out to have been that somebody told him something? I cannot tell yet what his personal knowledge is until he tells us what it is. I overrule the objection and allow the question. (To the witness): State yes, or no, whether you recollect or do not recollect.

A. I do not recollect.

Q. Is there anything on that book that refreshes your memory? A. Yes, sir.

Q. Looking at that, and refreshing your memory from that entry, can you tell us?

MR. LANE: I object to that as not cross-examination; that cannot be for the purpose of testing the witness's recollection.

THE VICE CHANCELLOR: You having referred to the entry, I think Mr. Vredenburgh is entitled to the whole entry, whatever it is.

MR. LANE: I think only so far as material to this case. I offered the entry and only had so much of it read as would show how much money was advanced by the Company to Denton; that was the only purpose of the offer. That is all that went into the record. Now, if there is anything else that has any bearing upon that, it is proper; but to get in what Mr. Tierney thought was the value of the stock I think is going into something that is entirely immaterial.

THE VICE CHANCELLOR: I agree with you on that. I overrule the question.

Q. Please read the entry that you have there of this transaction?

MR. LANE: I object to that.

THE VICE CHANCELLOR: I overrule that objection. I do not think you can get the benefit of the entry so far as it helps you, and not have the whole entry introduced.

MR. LANE: I want to make my objection more special; I object to the reading of any part of that record except so far as it may relate to the account of money advanced by the Trust Company to Denton.

THE VICE CHANCELLOR: I overrule that objection. You having called this witness's attention to the entry for the purpose of refreshing his memory, I think Mr. Vredenburgh is entitled to the whole entry, whatever it is. I do not think you can get the benefit of a piece-meal written document. If you refer to it for any purpose, I think it all has to come in, so that the Court can have it all. I overrule the objection, and will let the witness read the entire entry.

A. "May 2, 1902, Loan to Henry M. Denton, 4 Mos. 6%, 13,500," and continuing on the same line, across the page, under the heading of "Collateral," "100 Sh. 2nd Jersey City"; and then under the head of "Market Value," "16,500"; and then under the head of "How disposed of" "Jany. 27. 05. Received 100 shares 2nd," and under that "Nat. Bank, Jersey City," then under that "Stock collateral" and then under that "on this loan," and then under that "Henry M. Denton."

BY THE VICE CHANCELLOR:

Q. In whose handwriting is "Henry M. Denton"? A. Henry M. Denton's handwriting. Now, going back and starting another new line, and bringing it over so that it begins where "May 2d." begins, "Sept. 2. Renewed for 4 mos. Due Jany. 2, 03," then under that "Jany. 2, do. do. do" ("under the renewed for 4 mos") "Due May 2, 03"; then "Oct. 29, do do do (under the renewed for 4 mos") Feb. 29, '04. Then there is a lot of red ink calculations of interest, and then, written practically across the item, is "Paid Jan'y. 27, 05."

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

THE VICE CHANCELLOR: There are also memoranda in the same item which the witness calls the Court's attention to, which indicate payments on account of principal "June 30, 03, 1500", and "10, 29, 03, 2000", leaving a balance of $10,000, as the computation on the item shows.

BY MR. VREDENBURGH:

Q. After the words "Paid Jany. 27, 05" are the figures 1/6/05"—what does that mean?

Objected to as immaterial, irrelevant and not proper cross-examination; objection overruled.

A. That is the payment of interest to the 1st of January, 1905. That is in the Interest Column.

BY MR. LANE:

Q. There is something else in there, in lead pencil, that you have not read, is there not? A. Yes.

Q. What is it? A. It is "2568 7th Av. N. Y. City." That is not in my handwriting.

By The Vice Chancellor:

Q. You do not know who put that there? A. I think I know the clerk that did it. He is not in our employ now.

Q. I presume that that is intended to indicate the residence of the man who got the loan, is it not? A. To send the interest bills to, I presume; it is very likely; that was our custom.

Q. Yes, I noticed it on other items with other customers. A. Yes, sir.

William J. Field, sworn.

Direct Examination By Mr. Lane:

Q. Mr. Field, do you occupy a position in the Commercial Trust Company? A. Yes.

Q. What? A. Secretary and Treasurer.

Q. I show you a check dated August 23, 1901, to Henry M. Denton by the Commercial Trust Company of New Jersey, and ask you whether that check came from your file? A. Yes.

Q. And is for $6,000? A. Yes.

Q. Do you know the signature of Henry M. Denton? A. I have not seen it for some time, but that is his signature, I am pretty sure.

Q. On the back of the check? A. Yes.

Q. What was this money advanced by the Commercial Trust on account of? A. Of a loan for $6,000.

Mr. Lane: I offer the check in evidence. The check is admitted without objection and is marked Exhibit C-21. It is a check of the Commercial Trust Company, on the Third National Bank of Jersey City, to

Henry M. Denton, dated August 23, 1901, for $6,000, endorsed by Denton.

By The Vice Chancellor:

Q. Is there anything on that check to indicate that it was paid by your bank,—yes or no? A. Yes.

Q. It was paid, was it? A. Yes.

By Mr. Lane:

Q. Can you tell me, Mr. Field, when that loan was paid off to your bank? A. On May 1st, 1902

Cross Examination By Mr. Vredenburgh:

Q. When was the first interest paid on that note, Mr. Field? A. December 23, 1901.

Q. How much? A. $132.67.

Q. On two items? A. One item, one check.

Q. And when was the next item? A. January 23, 1902.

Q. How much? A. $31.

Q. And when was the next payment of interest? A. May 1, 1902, $67.

Q. And when was this loan paid? A. May 1, 1902.

Q. Does your book indicate at all how it was paid? A. No.

By The Vice Chancellor:

Q. Was it a straight loan, or on collateral? A. It was a collateral loan, secured by 50 shares of the Second National Bank of Jersey City. This check was deposited by Denton in the Second National Bank.

Q. That shows on the back, does it? A. It shows that it has been deposited.

Q. But not necessarily by Denton? A. Well, to Denton's credit.

Q. Not necessarily to Denton's credit. As matter of fact, we know it was not, Mr. Field so do not tell us that; we know that it went to Mr. Hogencamp, in his account; so you see, you cannot always tell from the back of the check; all that can tell is that it was endorsed by Denton and deposited, that cannot tell who deposited it. A. Well, it was endorsed by Denton and deposited in the Second National Bank.

WILLIAM HOGENCAMP, recalled.

CROSS EXAMINATION BY MR. VREDENBURGH:

Q. Mr. Hogencamp, you were President of the Second National Bank how long, from what year to what year? A. I think it was from 1876 or '77, to 1906, or 1905; I think it was 1906, I won't be positive.

Q. Do you remember what date in 1906 it was? A. No, I do not.

BY THE VICE CHANCELLOR:

Q. The early part of the year, or the latter part of the year? A. The early part of the year.

BY MR. VREDENBURGH:

Q. The Second National Bank was located here in Jersey City, on the corner of Montgomery and Washington Streets? A. Yes, sir.

Q. During all that time? A. Yes, sir.

Q. And had the Second National Bank a Board of Directors during that time? A. Yes, sir.

Q. And they met how often? A. Every week, as a general thing.

Q. Was there a record kept of what they did?

THE VICE CHANCELLOR: Minutes, do you mean?

Q. Minutes of what they did—did you have minutes? A. Yes.

Q. Of the meetings of the Directors? A. Yes.

Q. And did they pass on all the loans? Wasn't it their duty to pass on all the loans? A. It was their duty to approve of them.

Q. To approve the loans? And did they approve them? A. Yes.

Q. Were the loans brought to their attention, and did they approve of them? A. Yes.

Q. And how many directors were there? A. How many directors in the bank?

Q. How many directors in the bank were there while you were president? A. Well, the number varied from thirteen down to seven; I don't know whether it was seven or five; I don't recollect now.

By The Vice Chancellor:

Q. It started, I suppose, at the smaller number and was increased from time to time? A. No, on the contrary.

Q. Oh, it started at the larger number? A. Yes.

Q. And decreased? A. And decreased.

By Mr. Vredenburgh:

Q. Can you give us, generally, when there were only five,—from what time to what time? A. I cannot.

Q. Well, generally—about when? A. I don't know.

Q. When were there only seven? A. I don't know.

Q. For how many years were there only seven? A. I don't know.

Q. When was it increased from seven to a larger number?

THE VICE CHANCELLOR: It was the other way around; they tapered down, so you cannot say "When was it increased to a larger number?" It was always a decrease.

MR. VREDENBURGH: Oh, it never was increased?

THE VICE CHANCELLOR: No, it started at thirteen and kept on going down until they got down to five.

Q. When was it decreased to seven? A. I don't recollect.

Q. Well, about when,—ten years ago? A. I could not tell you. I have no recollection.

Q. Four years ago? A. I have no recollection on it at all.

Q. The books of the bank will show, won't they? A. The Minute Book will show.

MR. VREDENBURGH: (To Mr. Lane): Is the Minute Book here?

MR. LANE: I do not know, but I think not.

MR. VREDENBURGH: Well, will you have the Minute Book here?

MR. LANE: Not on my side of the case.

MR. VREDENBURGH: No, on my side of the case. I am cross examining this witness about it.

MR. LANE: I object to any cross examination about the Minute Book; it is not proper cross examination.

THE VICE CHANCELLOR: I overrule the objection, because there is no question that makes it pertinent. He has asked you whe-

ther you will produce the Minute Book. It seems to me you can do one of two things, you can say yes or no, or sit mute.

MR. LANE: All right, I sit mute.

THE VICE CHANCELLOR: All right. Mr. Lane does not say anything, Mr. Vredenburgh. Of course there is a perfectly proper way to have him produce it, namely, by giving him a subpoena duces tecum.

MR. VREDENBURGH: I have given him a subpoena to produce it.

THE VICE CHANCELLOR: Oh, well, if you have, read your notice, and I will see whether I will compel him to produce it after you read your notice.

MR. VREDENBURGH: Have you the notice, Mr. Lane?

MR. LANE: I have not the notice, Mr. Vredenburgh. I gave it to the officer of the bank to get out the books for which you asked, and it had not been returned to me. My recollection is that you did not ask for the Minute Book, but you may have.

MR. VREDENBURGH: I give you a notice now, Mr. Lane, to produce the Minute book.

MR. LANE: I haven't it here.

MR. VREDENBURGH: Well, it is downstairs. I ask you to produce the Minute Book for the year 1899 to the year 1906.

THE VICE CHANCELLOR: The only way you can get it, that I know, is to subpoena him duces tecum. Mr. Lane says he has not got it here. He is not required to go after it.

MR. VREDENBURGH: Well, I wanted to put him in the position of saying he will, or he will not, first.

THE VICE CHANCELLOR: Well, will you run downstairs and get it, Mr. Lane?

MR. LANE: No, sir.

MR. VREDENBURGH: Well, I will serve a subpoena duces tecum.

THE VICE CHANCELLOR: All right, serve a subpoena duces tecum, and serve it on Mr. Ludlow or whoever has charge of it, and that will bring it.

Q. Mr. Hogencamp, can you tell us when, about, the number of Directors was decreased to seven?

MR. LANE: I object to that as not proper cross examination, may your Honor please. I have not asked him anything about the material management of this bank.

THE VICE CHANCELLOR: How is it proper cross examination?

MR. VREDENBURGH: He is here for cross examination, may it please your Honor, with regard to the conduct of this bank. He has testified with reference to the conduct of this bank as evidence of whether they had knowledge of these transactions.

THE VICE CHANCELLOR: I know, but how can the number of Directors possibly bear upon whether the bank, at a certain time, handed a certain amount of money to a man on a note?

Question withdrawn.

Q. Mr. Hogencamp, what dividends did this bank declare from 1899, while you were President? A. I do not recollect now.

Q. Well, about how much? A. I could not tell you now, the books will show it.

Q. You cannot tell what dividends they declared? A. I do not recollect now, no.

Q. Well, about how much,—what is your best recollection of the amount of dividends they declared? A. Well, it varied from five per cent. semi-annually, down to four per cent. and I don't know whether it got below that or not; that is one of those things that has gone out of my mind.

Q. That has gone out of your mind, how much dividend your bank declared in 1899? A. Yes, sir.

Q. Can't remember it at all? A. No, sir.

Q. Do you mean to say it was only five per cent. then? A. I say I have no recollection about it.

Q. Wasn't it twenty per cent. then? A. No.

Q. Wasn't it twelve per cent. then? A. I couldn't say, I know it was not twenty.

Q. Do you mean to testify here that you cannot tell that the dividends in your bank were twelve per cent. in 1899 and 1900? A. I do not recollect, Mr. Vredenburgh.

Q. What were they in 1905? A. I don't recollect.

MR. VREDENBURGH: (To Mr. Lane): Have you the dividend book here?

MR. LANE: No, sir.

Q. What book would show what dividends were declared? A. The dividend check books.

Q. What other books would show it? A. The posting in the ledger.

Q. Is the ledger here? A. I think so.

Q. Well, turn to the ledger and see what the dividend was.

MR. LANE: I object to that as not proper cross examination.

THE VICE CHANCELLOR: How is that proper cross examination?

MR. VREDENBURGH: It is important to show to whom those dividends went, to show the ownership of the stock, is it not?

THE VICE CHANCELLOR: Yes, but that is not what you are asking him; you are asking him merely to look and see what dividends were declared, not to whom they went.

MR. VREDENBURGH: They went to the stockholders, if they were declared.

THE VICE CHANCELLOR: But you are merely asking him now to look at the book and tell us what dividends this bank declared from time to time, and that is not what is pertinent in this case. The pertinent thing is whether the dividends which were declared during the time he says Denton owned this stock went to him, or went to Denton; that, I think, is material upon the question whether there was a sale of stock from Hogencamp to Denton; but to have him merely show us where some one has entered the declarations of dividends from 1876 until 1906 could not help us in the least.

Q. Will you turn to your account and show what dividend you received in 1900?

THE VICE CHANCELLOR: The stock sale is alleged to have taken place in April, 1900. I think that is pertinent.

A. It is not covered in this ledger (referring to the ledger now before the witness).

Q. How much is covered in that ledger? A. From 1901, the ledger commences.

THE VICE CHANCELLOR: The first item on the personal account here is February 27, 1901, and the last item is the 17th of December, 1902; that is all that is in this particular individual ledger that is before the witness.

Q. Is Mr. Denton's account in that ledger also? A. For that time; yes, sir.

Q. Well, will you show us from that account who received the dividend on this 100 shares of stock that you say was sold to Denton in April of 1900?

MR. LANE: I object to that, on the ground that it is not proper cross examination; I asked no question about dividends, as I recollect; and, secondly, it is incompetent, because it has not been shown that the witness can tell, by refreshing his recollection, or by any other means, by an inspection of these books, what dividends Mr. Denton got.

THE VICE CHANCELLOR: I overrule the objection and sustain the question. Having gotten this witness to testify that he made the sale, he is certainly open to cross examination as to every element of the sale; and whether or not he can tell from these books rests with him, not with you.

A. This book don't go back as far as that; I cannot show it in this book.

BY THE VICE CHANCELLOR:

Q. He does not mean that: You have testified that in April of 1900 you sold 100 shares of the

stock of the Second National Bank to Henry M. Denton; you have said that this book which you have before you shows your individual ledger account with the bank from a certain date in 1901, to a certain date in 1902, and, similarly, shows the account of Henry M. Denton between the said dates; he is now asking you to consult that book and show who got the dividends on those 100 shares of stock between those two dates, you or Denton—do you understand that? A. Yes, sir.

Q. Now answer it? A. The account here is only a statement of figures; it does not say what it was, nor the source, nor anything else.

By Mr. Vredenburgh:

Q. Did you get the dividends on the 100 shares, or did Mr. Denton get the dividends? A. Mr. Denton got the dividends on the 100 shares.

Q. Show it in his account, where he got the dividends?

Mr. Lane: I object to that as incompetent, because he has already testified that he cannot show from this account.

The Vice Chancellor: Then he can say so. It is competent. He says "Show me in the account," and the man may say "Why, there is nothing here to show," or whatever he has to say. The mere fact that you think it is difficult for the witness to answer the question does not make it improper that it should be asked. I overrule the objection.

A. I am unable to do it here.

Q. Why? A. Because the ledger account here is only a statement of figures, without any reference to the source.

Q. When were the dividends declared, what time of the year? A. In January and July.

Q. Semi-annually? A. Semi-annually.

Q. His account for January is not in there, you say?

THE VICE CHANCELLOR: It is for one year, but not for the other.

MR. VREDENBURGH: January, 1900, is not in there?

THE VICE CHANCELLOR: No.

Q. But July, 1901 is, is it not? A. Yes.

Q. Now, show me, on the 1st of July, 1901, the item which represents that dividend on 100 shares? A. I cannot do it.

Q. Why not? A. I am unable to say from this what these items are, what they consist of.

Q. Well, what item is there on the 1st of July, 1901? A. July 11th—

Q. No, July 1st? A. There is no entry on the 1st of July.

Q. Or on the 2d? A. None.

Q. Or on the 3d? A. None.

Q. Or on the 4th? A. No.

Q. What is the first date in July? A. July 11th.

Q. What is that? A. $1342.77.

Q. That was not a check for dividend, was it? A. I don't know; it may have been half a dozen items, for all I know.

Q. How was the dividend paid, by check? A. By check.

Q. By check of the Second National Bank? A. Yes.

Q. And you say there was a check of the Sec-

ond National Bank made to Denton for that dividend? A. I do not say that; no, sir.

Q. What do you say about that,—how was it paid to Denton? A. It would not be paid to Denton until the stock was formally transferred in his name.

Q. Whom would it be paid to? A. If the stock was in my name, it would be paid to me.

Q. What did you do with it,—did you transfer that check to Denton? A. I certainly did.

Q. When? A. I don't recollect now.

Q. Show it, if you can, on the books, that you ever transferred any check to Denton for the dividend during any of that time.

THE VICE CHANCELLOR: As to that question, Mr. Vredenburgh, I shall have to interrupt you, because how can this book show that he transferred the check? You ask him to show, from this ledger, that he transferred the check—how could this ledger possibly show that?

Q. Where is the check that you gave to Denton for the dividend? A. I don't know.

Q. You have your own checks, haven't you? A. My own vouchers, yes.

Q. Where is it? A. Down at Deal, I presume.

Q. Haven't you gone over all those vouchers to see every check you paid to Denton? A. No, sir.

Q. Haven't you produced here those checks, to show what you paid Denton? A. No, there is lots of payments made to Denton that are not represented here.

Q. When, and where are they? A. Oh, down at Deal.

THE VICE CHANCELLOR: Which question do you want answered, Mr. Vredenburgh?

Q. When were they paid Denton,—that are not represented here? A. I would have to refer to the checks for that.

Q. Where are the checks? A. Down in Deal Beach.

Q. Why haven't you produced them? A. I haven't been asked to.

Q. You are a party to this suit, aren't you? A. I was made a party yesterday.

Q. Can you produce the checks by which you paid Denton any dividend from the 23rd of April, 1900, to 1905? A. I think I can.

Q. Will you? A. If I have time to get them; yes, sir.

Q. Can you point anywhere, in any of the books here, and show us any evidence at all that Denton ever got any of those checks? A. I cannot do it from here.

Q. Do you say he got the checks for all the dividends during that time? A. I think he did.

Q. What? A. I think he did.

Q. Well, cannot it be shown from the books here whether he did or not? A. I can show it from my books.

Question repeated. A. No, sir.

Q. What? A. Not from these books; no, sir.

Q. Well, from any books? What books can it be shown from? You were President of the bank. What books of the bank? A. From the books of the bank, the only thing where it would show would be in the ledgers; and I tell you right here, as I said before, it is an absolute impossibility for me to go to work and point to any en-

try here and know what it is now; it is only a matter of figures and has no statement as to what the deposit consisted of.

Q. Do you mean to say, Mr. Hogencamp, that from the 23d of April, 1900, to the date of the transfer of the stock to Denton on the Transfer Book, those dividends were gotten by you and paid to Denton by check to him—your check to him? A. Yes, sir; I am satisfied they were.

Q. Then, after the transfer of the stock to Denton, to whom were the checks made then? A. Henry M. Denton.

Q. Were they given by him to you? A. I do not recollect.

Q. Will you say that he did not endorse them over to you at once? A. I have no recollection of it at all.

Q. And you have no recollection what the dividends were during those years from 1900 to 1905? A. I do not recollect now; no, sir.

Q. Cannot tell whether it was five per cent. or fifteen? A. I do not propose to guess at it; I say, I do not recollect. There are books that will show what the amount of dividend was. They are not in my possession.

Q. Well, but Mr. Hogencamp, what I cannot understand is that you were President of the bank, and sold this stock, you say, for two hundred and forty, and cannot tell us what dividend was being paid on it? A. I do not recollect now; no, sir.

Q. What do you mean by you do not recollect now? How did you fix the price of two hundred and forty if you don't know what dividends were paid on it? A. That is a matter of ten or eleven

years ago; I cannot recollect ten or eleven years ago.

Q. Cannot recollect how much dividend was declared by your bank ten or eleven years ago? A. No, sir.

Q. Well, how is it you recollect those items, then, so clearly, that Mr. Lane has called your attention to? They are ten or eleven years ago, aren't they? A. Those are checks dated there. Those were checks.

Q. Mr. Hogencamp, who advanced the thousand dollars to Shaw to improve his stable in 1902? A. The Second National Bank.

Q. You did not do it? A. Personally?

Q. Yes? A. No, sir, not that I recollect.

Q. You made an affidavit in a case pending in this court, in which Leonard Richards was complainant and Robert L. Shaw, defendant, on the 27th day of September, 1909, did you not? A. I made an affidavit, I don't remember the date.

Q. Have you testified that you advanced it? A. I don't recollect.

Q. Were you present in the court on the decision of that case of Richards vs. Shaw, when the court announced its memorandum orally upon the question of that thousand dollar advance? A. I do not recollect now.

Q. You do not recollect whether you were present or not? A. No, I do not.

Q. When Mr. Hudspeth was present, and argument was had, and the Court announced its conclusions? A. I do not recollect now.

Q. Were you present at the argument? A. I do not recollect.

Q. Don't you recollect that the only item in

Mr. Shaw's account which could not be accounted for was a nine hundred dollar item? A. I don't recollect it now.

By The Vice Chancellor:

Q. Don't you recollect this, Mr. Hogencamp: Don't you recollect that for a very long time in that Shaw case we went over the check books of Mr. Shaw, and the bank deposit book of Mr. Shaw, and the ledger containing Mr. Shaw's account, and traced every other item except one item of $900 which appeared out of its place in his bank pass book, and which, so far as we were any of us able to find out then, was unaccounted for—that is to say, Mr. Shaw testified he did not put it there, and his check book did not show that he credited himself with having put it there, and you did not testify that you put it there, and I do not think that Mr. Denton testified that he put it there, and, in that sense of the word, don't you recall that it was unaccounted for—we did not know how it got there? A. There was a transaction there, but he put it on a specific item of $900; I do not recollect now what the item was. I know there was something there, as you say, that was not accounted for, I do not recollect the amount.

By Mr. Vredenburgh:

Q. Don't you recollect that, after an examination of the different items, it was ascertained that the bank had not advanced the thousand dollars? A. No, I don't recollect that.

Q. You do not recollect that the Court found that as a fact? A. There was something or other there—there was a discrepancy we found, but what the particular amount was now has gone out of my mind.

Q. Won't you please look at the ledger, at Mr. Shaw's account for 1901, and show us where it was that the bank advanced to Mr. Shaw a thousand dollars? A. I have not that ledger here.

Q. Haven't you the ledger of 1901? A. The A to L ledger I have.

THE VICE CHANCELLOR: And S does not come within those letters. It is here in court, but the witness has not got it in front of him.

It was afterwards ascertained that this particular individual ledger M to Z was not in the court room, and it was sent for and pending its production Mr. Vredenburgh continued his examination.

Q. I show you his pass book, while you are waiting for that, Mr. Hogencamp; won't that enable you to tell where he got the thousand dollars? A. It will not.

Q. Will any other book? A. It may.

Q. What book? A. It may be in the General Ledger.

BY THE VICE CHANCELLOR:

Q. The General Ledger or the Individual Ledger? A. The General Ledger. I would like permission to look at that.

THE VICE CHANCELLOR: Yes, certainly look at it.

THE WITNESS: (After examining the General Ledger) I cannot find it on this ledger here.

BY MR. VREDENBURGH:

Q. Well, Mr. Hogencamp, don't you recollect that the Court found, as a fact, after a careful

examination of all the vouchers, that no thousand dollars was given Mr. Shaw by the bank? A. His pass book shows that there was $900 credited to him on the 30th of January, 1902.

Q. And that was the $900 which it was supposed the bank gave to him, was it not? A. I don't remember now.

Q. You don't remember now, eh? A. I don't remember.

Q. You were a witness in that case, were you not? A. Yes, sir.

Q. Did you, in that case, testify that you did not put that money, that $900, in Mr. Shaw's account? A. I do not recollect now, sir, what my testimony was.

Q. Well, you know now, don't you?

THE VICE CHANCELLOR: Well, do you mean that he knows now whether he did or did not?

MR. VREDENBURGH: No, what I meant to ask him was whether he does not know whether he testified to such a thing as that or not.

A. I do not recollect my testimony then. It is a good while ago, and I have had a good many things in my head since. I cannot remember these dates and figures, it is impossible.

Q. Do you recollect that the hearing of the case was adjourned from May 8th to May 14th, 1900—the hearing of that Shaw case? A. I do not.

Q. Do you recollect that on May 14th, 1908, you produced a check, dated January 30, 1902, on the Second National Bank, to the order of R. L. Shaw, signed by Henry M. Denton? A. I do

not recollect it now. If it is in the testimony there I will stand by the testimony, as far as that goes, but I have no recollection of it now, short of seeing the check; I do not recollect the transaction.

THE VICE CHANCELLOR: He don't recollect whether he testified to that or not.

Q. I will ask you this question: Did you testify as follows (reading from minutes of final hearing of case of Leonard Richards, Complainant, vs. Robert L. Shaw, Defendant, dated May 14, 1908, p. 412). "Q. I call your attention to Exhibit 1 of defendant, being the bank book of R. L. Shaw, and to the item 'January 30, 1902, Dep. $900,'—have you traced that apparent deposit of $900" do you recollect that Judge Hudspeth asked you that question? A. I won't dispute it, but I can say that I do not recollect it; I won't dispute it.

Q. Your answer was: "A. I have. Q. I show you what purports to be a check, dated January 30, 1902, on the Second National Bank 'Pay to the order of R. L. Shaw $900.' Signed 'Henry M. Denton'—whose signature is that?" and your answer was: "Henry M. Denton's." "Q. I show you another apparent check, dated January 30, 1902, drawn on the Second National Bank, 'Pay to the order account of R. L. Shaw, Nine hundred dollars,' signed 'W. Hogencamp, Trustee,' is that your signature? A. Yes. Q. Whom were you trustee for? A. Henry M. Denton": Do you recollect testifying to that? A. I think I do; I think I do.

Q. Have you those checks now, Mr. Hogencamp? A. What checks?

Q. Those checks I have just read about to you? A. No, sir.

Q. Your counsel hands them to me here,—I ask you whether those are the checks which you referred to in your testimony (showing witness two checks now produced by Mr. Lane)? A. May I ask a question?

Q. Yes. A. Were there two checks in question, or one check? (After having repeated to him by the stenographer the extract from the minutes of the hearing of the case of Richards vs. Shaw, page 412, previously read by Mr. Vredenburgh). Yes, I think they are.

Q. Did you thereafter testify, in answer to Judge Hudspeth's question "And what did those two checks I now show you represent? A. This was the original check signed by W. Hogencamp, Trustee, for Nine hundred dollars, paid by the bank; the other check had Denton's signature. Q. Which was the original check? A. This was the original check (indicating one of the two checks). Q. Signed by 'W. Hogencamp, Trustee'? A. Yes, sir. Q. And the other, signed by Henry M. Denton, was what? A. Was to be pinned fast to this as my voucher for it." Do you recollect that? A. I think I do now.

Q. (Resuming reading): "Q. From which account were the moneys actually taken and credited to R. L. Shaw's account? A. From the Trustee account. Q. And whose account was that? A. Henry M. Denton's,"—Is that so? A. That is it.

Q. So that that $900 was advanced out of Mr. Denton's account? A. Yes, I thought it was out of the Trustee Account.

Q. Mr. Hogencamp, do you recollect being present at the first trial, when Mr. Robert Carey represented the complainant in the case of Richards vs. Shaw? A. Yes.

Q. That was on May 14th, 1907? A. I do not recollect the date.

Q. Do you remember testifying at that time? A. Yes.

Q. Do you remember that after you testified the case went over and did not come up for trial again until the following year? A. I think that is so, although I do not recollect it now

Q. And do you recollect that one of the reasons stated to the Court by Mr. Carey, in your presence, for that case going off, was that the note had been left by you down at Deal and could not be produced? A. I do not.

Q. What? A. I do not recollect it; no, sir.

Q. Well, do you know the note was not produced? A. I do not recollect that; no, sir.

THE VICE CHANCELLOR: The note you are now talking about, Mr. Vredenburgh, is the Shaw note for $13,000, which was alleged in that suit to be the thing secured by the mortgage then sought to be foreclosed,—is that correct?

MR. VREDENBURGH: Yes.

BY THE VICE CHANCELLOR:

Q. Now, Mr. Vredenburgh asks you whether you recall that when the foreclosure suit of Richards vs. Shaw on the $13,000 mortgage alleged to be secured by a note for $13,000 made by Shaw, came on for trial before me, that Mr. Robert Carey, who was then counsel for the complainant Richards, stated as one reason why he could not then reform his bill properly (it being improperly formed, he having stated in his bill that it was on a bond, and having found out it was not on a bond) one of his reasons that he gave that

he could not reform his bill was that the note was in your possession down at Deal, that you had not brought it up—do you remember that? A. I have no distinct recollection of it now.

By Mr. Vredenburgh:

Q. Don't you recollect that the note was not in court at that time? A. I do not.

Q. You have no recollection regarding it? A. No, sir.

Q. Mr. Hogencamp, what business was Shaw in in 1900? A. Livery stable, to the best of my belief now.

Q. Was he a depositor at the bank at that time, in 1900?

The Vice Chancellor: During the year 1900 was Shaw a depositor in the bank?

The Witness: Allow me to see the pass book?

Mr. Vredenburgh: You refer to his pass book, do you not?

The Witness: Yes, sir.

Pass book of Robert L. Shaw handed the witness by Mr. Vredenburgh.

A. He was a depositor in the bank at that time.

Q. Look again and see. You did not hear the time, I think. I do not think you heard the question. (Former question repeated as follows: Q. Was he a depositor at the bank at that time, in 1900?) A. I don't recollect that.

Q. When did he become a depositor in the bank first? A. I don't know.

Q. Haven't you the book there? A. This book indicates a deposit on September 12, 1901, as a first deposit, as the first deposit in this book.

Q. You are now referring to the pass book of Shaw? A. Yes, sir.

Q. Cannot you look in the bank books and show whether he was a depositor before that date? A. I can look in the Individual Ledger.

Q. Well, won't you look, then? A. Certainly, I can look in the Individual Ledger. That is the one that is not here.

Q. Had he been in the livery stable business before that date, before the year 1900? A. I think so; I am not positive; I do not recollect when he went into the business.

Q. He was quite a small depositor in the bank, was he not, after he commenced in 1901? A. Yes, from the time this book commenced. I don't know whether that was the original one or not.

Q. The whole amount of his deposits, from September 1st, 1901, to March 4th, 1902, was only $2584, wasn't it? A. No, sir.

Q. How much was it? A. $3484.50.

Q. That includes the $900 that was placed there that I have been examining you about previously, does it not? A. That includes that item of $900.

Q. Now, with that exception, during that time, he deposited only $2584? A. Yes, sir.

Q. From March 4th, 1902, to May 3rd, 1902, he deposited less than $1200, didn't he? A. Yes.

Q. And from May 3rd, 1902, to August 13, 1902, he deposited less than $2300? A. $2300.

Q. Mr. Denton, in 1901, was in what business, —Henry M. Denton? A. Operating in real estate, I think. I do not know what time he commenced, but I think that was the time.

Q. You think he commenced to operate in 1900? A. No, I don't say that, I say I think he was operating in 1900.

Q. And how long had he been operating in real estate? A. I don't recollect.

Q. Well, about how long? A. I don't recollect at all the length of time.

Q. You cannot recollect how many years prior to 1900 Mr. Denton was operating in real estate? A. I do not recollect now; no, sir.

Q. Cannot you say whether it was five years? A. No.

Q. Or six years? A. I have no recollection of it now.

Q. Don't you know that he was speculating in real estate prior to 1900? A. Well, this book only goes back to 1901.

THE VICE CHANCELLOR: Repeat the question.

Question repeated. He is asking for your recollection,—don't you recollect that he was speculating in real estate prior to the year 1900?

A. Yes, I think he was.

Q. Were you financially interested in those properties in which he was speculating prior to 1900? A. What do you mean, exactly?

Q. Is not the question plain? (Question repeated.) A. Personally or officially?

Q. I said you? A. Me?

THE VICE CHANCELLOR: You, yes.

A. No, sir; I was not interested.

Q. In no way, individually? A. In no way individually.

Q. You did not buy in any property in New York for him prior to 1900, individually? A. I do not recollect now.

Q. Do you recollect the property on 79th Street and Amsterdam Avenue, in the City of New York? A. There was a property up there; yes, sir.

Q. Do you recollect going over there and buying that in at foreclosure sale? A. I do not recollect it.

Q. That would be something that you would recollect, if it happened, wouldn't it, Mr. Hogencamp,—going over there and buying in property at a foreclosure sale? A. I do not recollect it.

By The Vice Chancellor:

Q. He wants to know whether, if you had gone over to 79th Street, or wherever this sale was held, and bought the property at the corner of 79th Street and Amsterdam Avenue, you would not have recollected it? A. I might, and might not. I do not recollect it now.

By Mr. Vredenburgh:

Q. Did you attend a foreclosure sale in New York, prior to 1900, and make a bid on a property, and give a check for a deposit? A. I do not recollect it.

Q. Did you, after 1900? A. I do not recollect it.

Q. Do you recollect attending at 115 Broadway with Mr. Denton (and perhaps others, but with Mr. Denton), at a foreclosure sale, at which you bid, at any time? A. I do not recollect it now.

Q. Do you recollect your paying, upon some one else's bidding, under the circumstances I have just mentioned, at that place, when Mr. Denton was with you? A. I do not recollect it now. If I was there, it has gone out of my memory.

Q. Well, you do not recollect going there at

all, then? A. I do not recollect having been there; no, sir.

By The Vice Chancellor:

Q. But you are clear, are you, in your testimony, that there can be no doubt about the fact that you never, individually, had any financial interest in any real estate matters in which Henry M. Denton was interested? A. I am sure of that.

By Mr. Vredenburgh:

Q. Were you not interested in property on the corner of 68th Street and West End Avenue? A. No, sir.

Q. Did you not have a mortgage on that property? A. I do not recollect now. I had so many transactions with Mr. Denton that I have forgotten the details completely.

By The Vice Chancellor:

Q. Well, I do not understand how you can testify that you did not have any interest in a property, and then, the next minute say that you are not prepared to say you did not have a mortgage on it. What do you mean by testifying to that? You see, I am a trier of fact, I am like a jury, and I have to get at the facts: Now, one minute you testify "I never had any interest in a property at the corner of 68th Street and West End Avenue", and the next minute you say "I won't say that I did not have a mortgage on it,"—now, what do you mean? If you had a mortgage, of course you had an interest; and how can you swear positively that you never had an interest, and then, the next minute swear that you would not swear that you did not have a mortgage on it? I do not understand it. Just explain those two answers? A. I will explain this: That I never had any direct

or indirect interest in any property of Mr. Denton at all in any shape, manner or form. I do not recollect as to these other transactions; it may have been that there was a mortgage there, it may have been that it was taken in my name; I say, as far as that is concerned, I have no recollection, that is all.

THE VICE CHANCELLOR: That was not what he asked you. He did not ask you anything that remotely resembled that whatever. He asked you this: "Did you have an interest in a certain specific piece of property?" He did not say a word about Denton. You said, "No, sir." Then he said, "Did you have a mortgage on it?" You said, "Well, I may have had a mortgage on it." Now, I cannot understand that. You either do not listen, or, in some way or other, I do not understand you.

BY MR. VREDENBURGH:

Q. Did you know that Denton owned that property at 68th Street and West End Avenue?

THE VICE CHANCELLOR: Did it ever come to your knowledge that Mr. Denton owned the property that Mr. Vredenburgh has just mentioned?

A. I do not recollect now, sir.

Q. Did you, individually, advance money to complete the buildings on 68th Street and West End Avenue? A. Not that I recollect.

Q. Did you, in any capacity, advance money to complete the buildings that I have mentioned on that property? A. The bank loaned money to Mr. Denton, and paid Mr. Denton's checks; but, personally, I had nothing at all to do with that.

Q. Did you not commence a foreclosure, in your individual name, against that property? A. I do not recollect that now. If you have got anything there to refresh my memory, why, I am willing to answer it.

Q. You cannot recollect whether you commenced to foreclose a mortgage on that property in your own name, or not? A. I do not recollect it now; no, sir.

By The Vice Chancellor:

Q. And yet you are prepared to swear that you never had any interest in the property, is that correct? A. I say, I will swear that I never had any interest in the property.

Q. And yet you won't swear that you did not start to foreclose a mortgage on it? A. No interest—

Q. No, answer my question? A. I say, I do not recollect anything about the mortgage.

By Mr. Vredenburgh:

Q. Do you know a man by the name of F. A. Snow? A. Yes, I think I recollect the name.

Q. Did not he hold a prior mortgage on that property to the one that you foreclosed? A. Snow had—I don't know as I can answer that directly, Mr. Vredenburgh.

The Vice Chancellor: I do not see how he can either, because he has not said he has foreclosed any. You assume that he foreclosed a mortgage, and he has always said he don't know whether he did or not.

Q. What interest had Snow in that property, if you know? A. Oh, it is so long ago I cannot recollect. I am under the impression that—whe-

ther he had a mortgage on it, or what, or not, I don't know; I am satisfied that Mr. Snow had some interest in it, but at this late date I am not prepared to say what that interest was.

Q. Did Mr. Denton assign a mortgage on that property to you, Mr. Hogencamp? A. I do not recollect it now, Mr. Vredenburgh.

Q. You have no recollection? A. No, sir.

Q. Do you recollect the property on the corner of 119th Street and 7th Avenue, New York City, on the southwest corner? A. I do not recollect it now; no, sir.

Q. Have you no recollection of being paid money from the sale of that property? A. I cannot recollect the particular property that the money, if any, came from, if there was any property sold that I got the money from. If I got it I can account for it.

Q. Have you no recollection of getting a mortgage for $7500 on that property? A. I think there was a mortagge of $7500 given to secure McKelvey, or to secure me for money advanced to McKelvey, or something or other; whether it was on that property or not I don't know. I know I had a mortgage.

Q. You know you had a mortgage? A. Yes.

Q. Was it on that property? A. I do not recollect.

Q. Was it on New York property? A. Yes.

Q. Was that property, on which this mortgage was, property of Henry Denton? A. I do not remember who had the title. I do not recollect the transaction, except that I know I had a mortgage at one time of $7500.

Q. What became of it? A. The mortgage?

Q. Yes? A. It was paid off.

Q. It was paid off, was it? A. Yes.

Q. You do not recollect the date of it? A. I do not.

Q. Do you recollect who paid it to you? A. I do not recollect that either.

Q. Did you assign it, or was it satisfied? A. I do not recollect that, Mr. Vredenburgh, I think it was paid.

Q. Did not you assign it to a man named Levy? A. I do not recollect the details.

Q. But you were paid the amount? A. Yes, sir.

Q. You were not paid the whole $7500, were you? A. I do not know now.

Q. Wasn't it made in two payments, one of $500 and one of $7000? A. I do not recollect, Mr. Vredenburgh.

Q. Mr. Hogencamp, I hand you a copy of a check, or what purports to be a copy of a check, and ask you to look at it to see if that refreshes your memory with regard to a large payment to you? A. I do not recollect the transaction.

Q. Don't you recollect of receiving $6600 on the date of that check? Can't you tell from your books? A. Where is the original of this check?

Q. Well, the original is in their possession. A. Well, let me see the original.

Q. I have not got the original, I told you. That is a copy. A. Yes, sir; I received that.

Q. Did it go to your account? A. No, sir.

Q. Whose account did it go to? A. "W. Hogencamp, Trustee for Henry M. Denton." (Witness calls attention to an account in the Individual Ledger No. 17, A to L, page 688, under head of "Wm. Hogencamp, Trustee," and points to the item under date of May 29, 1902, $6660.36).

Q. Can you tell us with respect to what property that check was paid you? A. I do not recollect it now; no, sir.

Q. Did you know Charles H. York? A. Yes, sir.

Q. He was a clerk in the bank, was he not? A. Yes, sir.

Q. The Second National Bank? A. Yes, sir.

Q. And he was a relation of yours? A. Well, indirectly, far distant; a distant relation; a relation of my wife, not of me.

Q. Did Mr. York, at your request, and for you, purchase the property on Seventh Avenue, on the north side of West 146th Street, New York City? A. With my consent.

Question repeated. A. It was for Mr. Denton's benefit, as I recollect it; it was not for me, personally—if that is the transaction, I don't know. You have got the papers there. I do not recollect these transactions.

By The Vice Chancellor:

Q. What he is asking you is this,—not what is contained in some papers, but whether you did not buy a piece of property that we suppose had some value? A. No, sir, I did not buy it.

Q. That is what he is asking you, or whether Mr. York did not buy it for you? Of course, if he bought it for you, then, in every proper sense of the word, you bought it. Now, then, the question is whether you authorized an agent to go to New York and buy a piece of property there for you? A. No, sir; I did not.

By Mr. Vredenburgh:

Q. Did you request Mr. Denton to put that

property in York's name? A. Not that I recollect.

Q. Did you see the agreement between York and Smith with regard to the sale of it? A. I may have, I do not recollect it now.

Q. I show you an agreement, dated the 24th day of March, 1905, between Charles H. York and Henry R. Smith, for the sale of a parcel of land in the Borough of Manhattan, State of New York, at the corner formed by the intersection of the westerly side of 7th Avenue and the northerly side of 146th Street, and I call your attention to some figures in pencil on that agreement, and ask you whether those are your figures? A. Those are my memorandums there.

Q. What does it mean? A. I don't know. It says, "Consid. 48250; mortgage 35000."

Q. You don't know what it means? A. Well, "dollars" I presume.

Q. You don't know what it refers to, other than what is there? A. I do not recollect now. Let me see it, won't you?

Q. Certainly (Handing the paper to the witness). A. (After inspecting the paper). Evidently it was for the sale of that property, and the consideration would be $48250, subject to a mortgage, I presume, of $35,000.

Q. Why did you write it on there? A. As a memorandum, I don't know what else.

Q. Don't that refresh your mind, so that you can swear that York acted for you in that matter? A. Not for me.

Q. Whom did he act for? A. Henry M. Denton.

Q. He was not Henry M. Denton's cousin, was he? A. No, sir.

Q. He was not Henry M. Denton's employe in any way, was he? A. No.

Q. He was your employe in the bank at that time, wasn't he? A. Yes, sir.

Q. Is he alive now? A. No, sir; he is dead.

Q. Won't you look and see whether, on November 16, 1905, York did not pay you $2,837.05 by check, the proceeds of that property?

MR. LANE: That book is not here. This one only runs up to 1902.

THE VICE CHANCELLOR: That book (referring to Individual Ledger A to L and M to Z, for 1905) will have to be sent for.

Q. Do you remember that property,—I refer to the corner of 146th Street and 7th Avenue, New York?

THE VICE CHANCELLOR: He means the one which the contract concerned which you have just looked at, on which you have made the pencil memorandum.

A. There was another property there; I don't know where it was located.

Q. Were there two properties bought by York? A. Not that I know of.

Q. Well, this property was Denton's property, wasn't it? A. So I understand it; yes, sir.

Q. Now, after the $35,000 mortgage, was there a $7,000 second mortgage given to you on that property? A. As I said before, I had a $7,500 mortgage, but I do not recollect whether it was on that particular property, or not.

Q. You do not recollect that $7,500 mortgage? A. I recollect a $7,500 mortgage, but I do not recollect whose property it was on.

By The Vice Chancellor:

Q. I understood you to say, when you spoke of that before, that that was either to secure McKelvey, or to secure you for money which you had paid McKelvey,—is that correct? A. Yes, sir.

By Mr. Vredenburgh:

Q. Who was McKelvey? A. I think he was a builders supplies man, or carpenter, or something or another.

Q. Wasn't he a lawyer? A. Not that I know of; he may have been, I don't know.

Q. Didn't you go over to his office? A. McKelvey's?

Q. Yes? A. I don't recollect now what he was, Mr. Vredenburgh; he may have been a lawyer, or he may have been a doctor, I don't remember which.

Q. Did McKelvey give you a mortgage? A. I don't know. No, McKelvey couldn't—

Q. (Interrupting). Won't you please explain what you said about McKelvey; I did not catch it? A. McKelvey, as I recollect it, had a claim either for himself, or he was attorney for somebody else; that I don't recollect now. I know there was a man by the name of McKelvey that had a claim of some sort against Mr. Denton, and he wanted his money for some time, and was pressing Denton very hard; and Mr. Denton didn't have the money; and I loaned him fifty shares of my own bank stock, Second National Bank stock, and borrowed the money on to it and paid Mr. McKelvey. At that time I got a mortgage of $7,500, I think it was—$7,000 or $7,500—to secure me for the loan. The money that I borrowed I paid off myself. I borrowed it from outside parties. I forget what it was now,—$7,-

500, probably, maybe not quite so much, maybe a little more. I borrowed the money and I paid the loan, and I got a mortgage from somebody or other for $7,000 or $7,500. Was it $7,500, you say?

Q. Yes. A. And that was paid, as I recollect it, and that repaid me for the money that I put up.

Q. When was it that you gave Mr. Denton fifty shares of this Second National Bank stock to raise money on? A. I do not recollect the date.

Q. About when? A. May I ask Mr. Lane a question?

THE VICE CHANCELLOR: What is it? Just ask me.

MR. VREDENBURGH: Well, ask him out loud.

THE WITNESS: Mr. Lane, will you let me know the date of that check to McKelvey?

THE VICE CHANCELLOR: From Denton to McKelvey?

THE WITNESS: Denton's check to J. J. McKelvey.

THE VICE CHANCELLOR: It is May 1st, 1902, Exhibit 14. Get it and let him look at it.

The witness is handed a check, Exhibit 14, from Henry M. Denton to Jno. J. McKelvey, dated May 1, 1902, for $7,255.

A. I think I was mistaken in my statement there. Mr. McKelvey was not paid. The fifty shares of stock was left with Mr. McKelvey as security for this $7,255 of money that was due

him. When the money was borrowed over in Hoboken the money was placed to Henry M. Denton's individual account, and he drew his check for $7,255 to the order of John J. McKelvey, and paid off the claim there, I presume.

Q. When was it that you gave the fifty shares of stock of the Second National Bank to Denton to secure McKelvey? A. It was previous to that, I don't know how long.

Q. Well, about how long? A. I cannot tell you.

Q. Haven't you any memorandum to tell you? A. No, sir.

Q. Didn't you take any memorandum when you gave him the 50 shares of stock? A. I think it must have been about the time that I got that mortgage.

Q. You think it was about the date of the mortgage? Well, when was the date of the mortgage? I thought you said you had no mortgage?

THE VICE CHANCELLOR: He has always said that he had a mortgage about this McKelvey matter.

Q. Now, when was the date of that mortgage? A. You have the memorandum there, I think; I do not recollect it.

Q. There is a mortgage to you for $7,500, on my records, dated August 15, 1901,—is that the time, or about the time that you gave Mr. Denton 50 shares of stock to raise money on? A Not to raise money on.

THE VICE CHANCELLOR: He said it went to McKelvey, don't you see, and that McKelvey held it. That is his last statement —that McKelvey might hold that as collat-

eral security that Denton would pay him, so to speak, and at that time he got a mortgage, which Denton furnished to him; and then afterwards the mortgage was paid off, and that paid him back for the $7,500 that he paid McKelvey. That is his story now. In the meantime Denton had also paid McKelvey.

MR. LANE: No, he changed that.

THE VICE CHANCELLOR: No, he has never changed that.

Q. Whom did you give that 50 shares of stock to, whom did you actually deliver it to? A. I don't recollect now.

Q. Where did you deliver it? A. I do not recollect that either.

Q. Did you take any receipt for it? A. No.

Q. Didn't you give it to Denton in the bank? A. I may, I do not recollect it now.

Q. And took no receipt for it? A. Very likely I did.

Q. And what was he to do with it? A. To deposit it with McKelvey as security for the delay in getting the money on his claim.

Q. Let me refresh your memory, Mr. Hogencamp: Wasn't it that Mr. McKelvey should deposit it in the Fourth National Bank on Mr. Denton's note and raise the money, and didn't he raise $6,000 on it? A. I don't recollect that, sir.

Q. Don't you recollect $6,000 being paid you when you gave that stock? A. I don't recollect it, no.

Q. You do not recollect it? A. No, sir.

THE VICE CHANCELLOR: Your trouble is that you talk about the Fourth National Bank.

MR. VREDENBURGH: The Fourth National Bank of New York.

THE VICE CHANCELLOR: There has not been the slightest evidence that any money that was raised at the Fourth National Bank of New York was given to him. The $6,000 that was given him was raised at the Commercial Trust Company. That is the testimony. It may not be the fact, but I say that the testimony up to date is that the $6,000 which he identifies on his account came to him from Denton; that Denton got it at the Commercial Trust Company. Now I do not say that is the fact. It may all be utterly, absolutely false. But that is the testimony. Now you are asking him whether $6,000 did not come to him from the Fourth National Bank.

MR. VREDENBURGH: Yes, I am asking that.

THE VICE CHANCELLOR: Now, he says "No." Then you were barging with him as to whether he had not heretofore said that it had. He has never heretofore said that any $6,000 came to him from any other place than the Commercial Trust Company. That is all he testified to. You probably have some other facts in your mind, I have only the testimony.

Q. Mr. Hogencamp, that was quite an important transaction, your giving 50 shares of stock to Mr. Denton, and I think, perhaps, I can refresh your mind a little about that: Was not this the transaction,—that Denton was to take that stock over to the Fourth National Bank and raise $6,000 on it? A. I do not recollect it now.

Q. And didn't he do that, and didn't he come back and pay you, as part of that $6,000, the sum of thirty-seven hundred and some odd dollars? A. What date was that?

Q. I cannot tell you what the date is, all I can tell you is that you said you gave him that stock at about the date of that mortgage, which was in August, 1901? A. Well, I think it very likely I did.

Q. Very likely you did what? A. Let Mr. Denton have the stock.

THE VICE CHANCELLOR: That is not what he asked.

Former question repeated as follows:

Q. Mr. Hogencamp, that was quite an important transaction, your giving 50 shares of stock to Mr. Denton, and I think, perhaps, I can refresh your mind a little about that: Was not this the transaction,—that Denton was to take that sock over to the Fourth National Bank and raise $6,000 on it? A. Now that I have looked at the ledger, I can say that he did.

BY THE VICE CHANCELLOR:

Q. And by "the ledger" you mean the A to L ledger No. 17, at your account, page 702, where there appears an item "August 16, Denton 3783.-33"? A. Yes, sir.

BY MR. VREDENBURGH:

Q. Mr. Hogencamp, why did not you tell us that before? A. I cannot recollect all these different transactions and items until you go to work and bring something to my attention to refresh my mind.

Q. Well, you had your book there? A. Well, I

was not looking at that; I was trying to answer your questions.

Q. Now, on that deposit of the 50 shares with the Fourth National Bank of New York, you got, as you say, a little over $3700, $3783.33,—did you not at the same time get $7,200 in cash from this McKelvey transaction? A. No, sir.

THE VICE CHANCELLOR: At the same time?

MR. VREDENBURGH: One minute, I will change it:

Q. When did you get the 50 shares of stock back? A. I do not recollect that.

Q. How did you get it back? A. I do not recollect that.

Q. Didn't you get the stock back by the payment of $7,200 with this check on May 1st, 1902 —by this check which I show you dated on that day, Exhibit 14? A. No, sir.

Q. What did you give that check to McKelvey for? A. I did not give it.

THE VICE CHANCELLOR: You are mistaken all the time, Mr. Vredenburgh. He did not give it. That is the one that Denton paid McKelvey with. He paid McKelvey before that, he says, and then he says he got paid back when the mortgage was paid.

Q. Did you get the stock back at this time, on May 1st, 1902? A. I have no recollection of it then.

Q. Did you ever get it back? A. Yes.

Q. How did you get it back? A. I do not recollect now.

Q. It was put up as collateral in the Fourth National Bank, was it? A. So you say.

Q. Well, how did you get it back? You said it was. That was the true transaction, you said. How did you get it back? A. They would not surrender it unless the loan was paid. After the loan was paid I got my stock back.

Q. Well, who paid the loan? A. I do not recollect the details of that matter at all.

Q. Is not this the transaction: That when that note of Denton's came due in the Fourth National Bank McKelvey paid it and took the stock, and refused to give it to you? A. I do not recollect that; no, sir.

Q. You do not recollect that at all? A. No, sir.

Q. Do not you recollect urging Mr. Denton to get that stock back for you? A. No, sir.

Q. Eh? A. I do not.

Q. Don't you recollect that that was the reason that the money was borrowed over at the Hudson Trust, to get that stock back? A. No, sir.

Q. What? A. I do not recollect that; no, sir. There was $7,255 paid to McKelvey, what it was for I don't know; I always understood it was a claim of the Batavia Wood Turning Company; that was my understanding of it.

Q. Well, then, it is a mystery how that stock got back to you, ain't it? A. I know I got it, how I got it, I do not recollect.

Q. Who gave it to you? A. I do not recollect.

Q. And you never had anything to show at all that it was out of your possession for five months, eh? A. Not that I recollect now, unless I got that mortgage at the time the $6,000 was borrowed; I don't remember about that; I can't remember.

Q. Who was present when you gave that 50 shares of stock to Denton? A. I do not recollect.

Q. Well, where was the 100 shares of stock at that time that you say you sold to Denton? A. In the Second National Bank.

Q. What evidence is there that that was in the Second National Bank, except your statement of it? A. I could not tell you.

Q. Eh? A. I could not tell you what evidence there is.

Q. Can you produce anything in these books, or any other proof, written proof or verbal proof, that that 100 shares of stock was ever in the Second National Bank? A. Yes, sir.

Q. What? A. I have an order from Mr. R. L. Shaw to deliver it.

By The Vice Chancellor:

Q. But that order is dated August 20, 1901, and your testimony was that you then immediately surrendered it to Denton—so it was not in the bank at that time? A. I beg to differ with you, Judge; it was there.

The Vice Chancellor: All right, that ends it, then. I am talking about May 1st, 1902. Mr. Vredenburgh asked him where, when he got the stock back from McKelvey, the 100 shares of stock were that he sold to Denton. He said "in the Second National Bank." Now, his uncontradicted testimony is that on the 20th of August, 1901, he surrendered that stock to Denton. That is what he says. Of course he may probably correct it in fifteen minutes; but that is what he has sworn to at this time.

Q. You realize that, don't you? I do not want to misunderstand your testimony, or misinterpret it: Didn't you testify yesterday that when

the order, which is dated August 20, 1901, from Shaw to you, was handed to you, you immediately handed the stock either to Shaw or to Denton—is not that what you testified to yesterday? A. Yes, sir.

Q. And now Mr. Vredenburgh has asked you where that 100 shares of stock that you sold Denton was when you got your stock back from McKelvey, which yon now say was sometime on or after May 1, 1902; and you have just said it was in the Second National Bank. Now, I do not understand those two statements. A. Will you permit me to explain?

Q. Yes, certainly; that is what I want you to do. A. The 100 shares of stock was not all that I held, not by a large majority.

Q. No one said a word about that, we are talking as to that specific 100 shares—where was it? A. In the Second National Bank.

Q. At that time? A. Yes, sir.

Q. On May 1st, 1902? A. Yes, sir.

THE VICE CHANCELLOR: Then it is a marvelous 100 shares of stock, because your other testimony is that that was borrowed money upon at the Hudson Trust Company, and they had it over in the Hudson Trust Company.

MR. LANE: That is the uncontradicted proof.

THE VICE CHANCELLOR: Of course it is Now we have it in three places instead of two. Now, read my question to him again and let him answer it.

Court's question repeated as follows:

Q. Didn't you testify yesterday that when the order, which is dated August 20, 1901, from Shaw

to you, was handed to you, you immediately handed the stock either to Shaw or to Denton—is not that what you testified to yesterday? A. Yes, sir.

Q. And now Mr. Vredenburgh has asked you where that 100 shares of stock that you sold Denton was when you got your stock back from McKelvey, which you now say was sometime on or after May 1, 1902; and you have just said that it was in the Second National Bank. Now, I do not understand those two statements? A. The 100 shares of stock had been taken away on an order. The 50 shares of stock was a different 50 shares of stock altogether.

Q. He did not ask you a word about that, he asked you where the 100 shares of stock was when you got that stock back from McKelvey on the 1st day of May, 1902—now, where was the 100 shares of stock? A. It was over at Hoboken.

Recess until 2 o'clock, P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock, P. M.

WILLIAM HOGENCAMP, recalled.

BY MR. VREDENBURGH:

Q. Where was the bargain made between you and Mr. Denton for the alleged purchase of the 100 shares of stock? A. I do not recollect that.

Q. Who was present when the bargain was made? A. I do not recollect that.

Q. What was said, when the bargain was made,

by you? A. I cannot say that I recollect that, either.

Q. What was said by Denton? A. I do not recollect that.

Q. Where was the stock when the bargain was made? A. In my possession.

Q. What did he give you for the stock? A. Two notes of $12,000 each.

Q. Did he give them to you on their date? A. I think so.

Q. And when he gave you these notes, what did you do with the stock? A. Gave it to Mr. Denton.

Q. What did Denton do with the stock? A. Left it with the Second National Bank.

Q. What do you mean by that—"left it with the Second National Bank"? A. Well, it was left in the Second National Bank, as my recollection is, it was left in the Second National Bank for general collateral.

Q. Your statement of the transaction, then, is, if I understand it, that he gave you two notes for twelve thousand dollars each, you gave him the stock, and he put the stock up with the Second National Bank as collateral? A. As a general collateral.

Q. Collateral for what? A. Any moneys that might be due from him to the Second National Bank.

Q. Any money that might be due? A. Yes.

Q. What do you mean by that? A. Well, that he already owed, or that he might borrow.

Q. What evidence have you of any such contract as that? A. Only the fact that the stock was left there.

Q. What evidence have you that any stock was left there? A. Why, I know it was left there.

Q. Have you any written evidence of its being left there? A. No, sir.

Q. With whom was it left? A. Left with me, as President of the Second National Bank.

By The Vice Chancellor:

Q. Do you mean that Dr. Denton went through the form of taking this 100 shares of stock in his hand, and then handed it back to you—do you mean that? A. Practically, yes.

Q. No (question repeated). A. Well, yes, I will say yes.

Q. He went, then, through the form, did he, of your solemnly handing him this piece of paper, and his solemnly handing it back to you—is that rtue? A. That is my recollection of it; yes, sir.

By Mr. Vredenburgh:

Q. Did you endorse it at the time, or was it endorsed previously, or was it endorsed afterwards—the stock, I mean? A. It was either endorsed previously, or at the time; I don't recollect now.

Q. Was it endorsed to anyone's order? A. Endorsed in blank, is my recollection of it.

Q. Was there any date on the endorsement? A. I don't know.

Q. Now, what did you do with the two twelve thousand dollar notes that he gave you? A. I think I took them.

Q. Why didn't you discount them? A. I didn't need the discount just then.

Q. Well, what security had you for their payment—any at all? A. I had those two mortgages.

Q. Oh, in April, 1900, did you have the two mortgages? A. Well, it was about that time; I don't know whether it was just that time, or not, but I had them about that time.

Q. Well, the mortgage was not dated until September. A. Well, I may not have received it then, I may have just given him the stock and took his notes.

Q. What I want to know is what security you had for this twenty four thousand dollars worth of stock that you had passed over to Denton after he gave you the notes? A. I had his notes.

Q. But no security? A. I am not sure about that now.

Q. Well, what had you? Can't you tell us? You did not part with twenty-four thousand dollars worth of property and get nothing back for it, did you, except a man's note? A. Yes, I have done that frequently.

Q. Well, did you in this case? A. I don't recollect.

Q. Didn't you know at that time that Denton was being sued over in New York, had judgments against him over in New York for thirteen thousand dollars for the Batavia Wood Turning Company that you spoke of, and twelve thousand dollars for the American Missionary Society—didn't you know that at that time? A. I have no recollection now of knowing it.

Q. You do not remember now of previously having attended a sale, a foreclosure sale of his property over there, I think you said? A. I do not recollect now.

Q. Still, you state that the transaction was that you parted with that twenty-four thousand dollars without having any other security than

Mr. Denton's two notes? A. I have no recollection now of having any other security, and yet I may have had.

Q. Was Denton indebted to the bank at that time? A. To a smaller amount; yes, sir.

By The Vice Chancellor:

Q. What does "to a smaller amount" mean—smaller than what? A. Oh, my impression is it was about $17,000; I won't be certain about it, but that is my recollection.

By Mr. Vredenburgh:

Q. Did the bank examiners criticise that loan?

The Vice Chancellor: What loan?

Mr. Vredenburgh: The $17,000 loan to Denton.

A. Not that I know of.

Q. Did they criticise any loan to Denton? A. At that time?

Q. At any time? A. Yes, subsequently.

Q. When? A. Oh, quite some time after that; several years after that.

Q. Didn't they at that time at all? A. I think not.

Q. Sure about that? A. Yes, sir.

Q. Was not the reason, Mr. Hogencamp, that that letter of Shaw was written to you because the Examiner did criticise? A. No, sir.

Q. What other reason was there for your obtaining a letter of that kind from Shaw, of August 20th, 1901, except that the loan was being criticized by a bank examiner? A. No, sir; that was not so. I have no recollection of the bank examiner criticizing any loan at that time.

Q. Nor for a couple of years afterwards? A.

Nor for, yes, a couple, it may be three years afterwards, as far as I recollect it. I have no recollection of it now.

Q. I show you an affidavit purporting to be signed by you, in the suit of Richards vs. Shaw? A. Yes.

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

Q. Made on the 27th day of September, 1909? A. 1909; yes, sir.

Q. I read you from that affidavit and ask you what you mean by this assertion in that affidavit: "Deponent further says that, his memory now refreshed by the books and papers, that upon or about April, 1900, deponent sold to Henry M. Denton 100 shares of Second National Bank stock at a valuation of $240 each, and Henry M. Denton gave to this deponent at that time two notes, dated April 23d, 1900, marked Exhibit B of complainant, May 14, 1908, and Exhibit C of complainant, May 14, 1908. Deponent says that these notes were never discounted. That deponent has marked across their face, and these marks were on them when they were found, the word 'Cancelled.' Deponent further says that he could not use these notes in the Second National Bank because at that time Henry M. Denton had a large outstanding indebtedness with the bank, and the banking examiners were criticising the paper of Henry M. Denton"—now what do you mean by that? A. If I said so I must have believed it at that time, although I have no recollection now of the bank examiner ever criticising anything then. They criticised lots of things.

Q. Then that statement, according to your recollection now, is not true? A. That statement?

Q. Yes. A. I have no recollection, at that par-

ticular time, that the bank examiner was criticising.

Q. I also call your attention to the other part of it, that "he could not use the notes in the Second National Bank, because at that time Henry M. Denton had a large outstanding indebtedness with the bank,"—now, was that true? A. Yes, he had an indebtedness at the bank.

By The Vice Chancellor:

Q. He did not ask you that. Why don't you answer the question. (Question repeated). He wants to know whether that is true, that the reason you could not use the notes in April of 1900 was because Denton had a large outstanding indebtedness with the bank at that time,—is that the reason? A. That is the reason.

By Mr. Vredenburgh:

Q. Now, I call your attention to Mr. Denton's bank account to see if that is true, and I ask you to look at the date of March 31st, 1900? (Showing witness Individual Ledger A to L, No. 16, and the witness refers to page 338 of said Ledger). Just look at that date? A. I am doing so.

Q. Did he deposit on that date the sum of $112,164.48? A. Yes, sir.

Q. On the 3d day of April was his account balanced? A. Yes, sir.

Q. At that time did the bank owe him $29,345.13? A. Yes, sir.

Q. Did he owe the bank anything? A. Yes, sir.

Q. What? A. Loan.

Q. I will ask you one other question,—do you see a payment by him of $57,000 to the bank there? A. I see a payment of $57,411.09.

Q. Now, did not that pay up every dollar he owed the bank, and leave a balance of $29,345.13? A. I think not.

Q. Well, show it. We say that book shows that. Now you show any note or any indebtedness to the bank that was not paid up to that date if you can. You were president of the bank, and there is the book. A. On March 20th there was a loan of $13,000.

Q. Yes, and that was paid by that $54,000 check,—you can see that there, cannot you? A. On the 2d of April; yes, sir.

Q. Go on,—what else was there? A. There was the two Shaw notes.

Q. What two Shaw notes? A. Of $24,000.

THE VICE CHANCELLOR: Denton's name don't appear on those. The bank could not possibly have included them with some other instruments in writing that you have not got here. What Mr. Vredenburgh now asks you is to show from the books of the bank, which you have in front of you, that on the 3d of April, 1900, Mr. Denton was indebted in one dollar to the bank, you having shown, from his individual ledger account that he had a credit on that date of over $29,000 in his favor, and you having said that he was indebted in at least $17,000 to the bank; now, you must find a difference which amounts to $29,000 plus $17,000, to vindicate your position.

THE WITNESS: I may be mistaken about it. There was a loan account, a discount and a Henry M. Denton account, and there was accounts of Denton and Shaw.

THE VICE CHANCELLOR: He does not re-

strict you, as I understand it; he asks you to show it, that is all. You have said that he owed the money; now he asks you to show it. Of course Mr. Vredenburgh cannot restrict your method of showing it. He asks you to show it in any way you can.

THE WITNESS: Well, you say the Shaw account don't apply to it?

THE VICE CHANCELLOR: I do not say anything about it; all I say is that there is no evidence before me now which shows that the bank would have any right whatever to charge up, as against Mr. Denton, the $24,000 worth of notes which had been signed by Mr. Shaw. Mr. Denton's name did not appear on them in any way. I am willing to stand corrected if Mr. Lane or you can suggest in any way that, in the present state of the proofs, the bank could take Denton's money to pay Shaw's note. Do you know of any, Mr. Lane?

MR. LANE: No, I am not claiming that they could.

THE VICE CHANCELLOR: (To the witness). Of course, if you desire to testify that they did take Denton's money to pay Shaw's note, you may so testify. That will end this case, of course, if you do. They cannot collect it twice. If they have collected it out of Denton they cannot collect it out of Shaw.

MR. LANE: I am not claiming that.

THE VICE CHANCELLOR: Well, Mr. Hogencamp was seemingly endeavoring to say that Denton's indebtedness was increased by what Shaw owed the bank, and I can-

not see how that is possible. Denton's name did not appear on the Shaw notes in any way.

THE WITNESS: I am unable to tell it from this.

BY THE VICE CHANCELLOR:

Q. By "this" you mean by any of the books of the bank? A. That I have access to.

Q. Well, what book of the bank that you have not access to will enable you to tell? A. The General credits for that time.

Q. The General credits? A. Yes.

Q. What kind of things are in a book of the bank called "General Credits"? A. All the items on credit to bills discounted; the credit to call loans; the credit to bank deposits; interest; discount; exchange, and everything like that. That we call the general ledger.

Q. Is not the general ledger here for that? A. Yes, sir.

Q. Now why don't you turn to the general ledger and find the thing that you say will be there? A. The general ledger only gives the totals, it does not give the details.

Q. Find it in the totals there, in the general ledger, where it shows that at that time Henry M. Denton was indebted to the bank instead of the bank being indebted to Denton. Leave out the details for the present, and show us the aggregate amount that he owed the bank, without showing the details? A. I cannot do it without the general credit book.

Q. Why not, if the general credits are posted finally into the general ledger in a lump sum, if you say they are? Why cannot you show us the lump sum in the general ledger? A. I cannot.

By Mr. Vredenburgh:

Q. Will you look again at Mr. Denton's account and see if another settlement was not made on April 16th of the same year, 1900? A. Yes, well, the book was balanced.

Q. Well, at that time the bank owed Mr. Denton $11,180.97, didn't it? A. Yes, sir.

Q. So that he was not indebted at that time to the bank? A. So it appears here.

Q. Then what did you mean, in your affidavit, by saying, as I have read, that you "could not use those notes in the Second National Bank because at that time Henry M. Denton had a large outstanding indebtedness"?

Mr. Lane: May I interrupt? What time was he referring to then?

The Vice Chancellor: He was referring to the time he sold the stock.

Mr. Lane: April 23d, 1900?

The Vice Chancellor: Yes.

Mr. Lane: Well, we have not touched that time yet in this book.

The Vice Chancellor: That is the only time we are touching. The last settlement was the 16th of April.

Mr. Lane: But we are still not down to the 23rd.

Question repeated. A. What was the date of that?

The Vice Chancellor: The date of the Denton note was the 23rd day of April, 1900.

The Witness: What was the date of the affidavit?

THE VICE CHANCELLOR: The date of the affidavit was some date in 1909.

THE WITNESS: April 23rd was before the date of the Denton note.

BY THE VICE CHANCELLOR:

Q. In the affidavit made last year, which he has now read to you twice, you state that when you got the Denton notes you iould not use them because Denton was such a large borrower from the bank, and the bank examiner was criticising the large amount of money the bank had loaned to Denton; and now Mr. Vredenburgh has called your attention to the fact that as late as April 16th, 1900, the bank owed Denton $11,180.97, and he wants you to show where Mr. Denton became such a large borrower, between April 16th, 1900 and the 23rd day of April, 1900, that the bank examiner criticised his loans, and you could not borrow any more money from the bank on his notes? A. On the 23rd day of April, he borrowed $16,000.

Q. The same day he gave you the notes? A. I think so, yes, sir, if that was the date. On the 23rd he had a discount of $16,000, and it all went out before the 1st of May; it all went out practically on the 27th of April.

Q. Is it not almost impossible that the bank examiner could have criticised the loan before the 23rd of April, if it was not made until the 23rd of April? A. Yes, sir.

Q. Then you must have been mistaken in your affidavit when you said that the bank examiner criticised the loan at that time, because the loan had not been made until the very day that you got the notes; is not that true? A. Yes.

Q. And now I understand your testimony to be

that on the very day that Mr. Denton gave you notes aggregating $24,000 you discounted his note, for his own benefit, for $16,000; is that correct? A. Yes, sir.

Q. And took the two notes he had given you for the stock, and did not try to get them discounted, did you? A. No, sir.

By Mr. Vredenburgh:

Q. Mr. Hogencamp, what collateral security did Mr. Denton give for the $16,000 loan that you have just spoken of? A. I do not recollect now.

The Vice Chancellor: Let us find out first whether it was a call loan, or a loan on a note, or what it was?

Q. Was that $16,000 loan a call loan, or a loan on a note of time? A. A time note.

By The Vice Chancellor:

Q. Three months? A. Well, it was $240 (referring to the interest charge); that would be a three months note.

Q. Is there anything there to show whether it was his own note, or a note that he endorsed of somebody else, or what it was? A. Nothing to show here.

Q. Won't any of these books show? A. Only the discount journal.

Q. Is that here?

Mr. Lane: No, sir.

By Mr. Vredenburgh:

Q. Do you mean to say that it was a note for three months, or a note on demand and was allowed to run three months, discounted every three months,—which do you mean? A. It was a note

payable three months after date, from the entry here, because the discount was taken off from the time the note was put in.

Q. It was not the custom to take it off when it was a demand note, eh? A. No, sir; it could not have been done, because there was no interest due then.

Q. Mr. Hogencamp, who passed on the loans by the bank, in the first instance? A. Well, I did, and Mr. Hasking did.

Q. Did you pass on that loan? A. I presume so.

Q. Well, did you bring the matter up before the directors at the next meeting? A. It was reported, the discount was reported at the next meeting of the directors.

Q. The minutes are here; did they show what the security was that he gave? A. No, sir.

Q. I understood you to say that he gave no security but his own note? A. I don't know now.

Q. There is nothing that you can tell, from the books there, what security he gave, eh? A. No, sir.

Q. Well, don't the bank keep some book in which you can tell what security is given for a note? A. No, we did not at that time.

Q. So there was no way in which the bank could tell whether a security was a collateral, or not, except the word of the President? A. Well, the president or the cashier. Sometimes I read off the discounts, and sometimes he did.

Q. The notes he gave you were stamped,—why were they stamped? A. Why, the Stamp Law was in force at that time, as I recollect, as I understand.

Q. That is the reason they were stamped? A. Yes, sir.

Q. That is the only reason you know of? A. That is the only reason I know of.

Q. Where did you get the stamps from? A. I don't know.

Q. Did you have them in the bank? A. We may have had them in the bank, or he may have got them outside; I do not recollect that. We had stamps in the bank, I know, whether we had any large stamps or not, that is another question.

Q. You said that the stock was handed back to you, as president, as collateral security,—was it handed back as collateral security for this $16,000 note? A. As a general security, as I said before.

Q. What do you mean by that? A. To apply to any indebtedness that he might have or secure.

Q. Was there any memorandum made of that? A. No.

Q. Then that depended entirely on your memory, as to what was said, did it? A. Yes.

Q. When did Denton ever tell you any such thing as that? A. When the stock was given to him. It was left there as collateral security.

Q. Mr. Hogencamp, have you, in your statement of this transaction ever stated before until the affidavit here that you have just referred to that that stop was given to the bank as a general security? A. I do not recollect that, sir.

By The Vice Chancellor:

Q. On page 338 of this Individual Ledger account, out of which you testified that on the 23rd of April the bank advanced $16,000 to Denton on

his note, there is also shown, under date of the 23rd of July, a $16,000 item,—has that any connection with the 23rd of April item? A. Yes, sir.

Q. What connection has it? A. The note came due on that day, and was charged to his account, and another loan put through for $16,000, the same amount.

Q. It also appears under date of the 23rd of July? A. Yes, sir.

By Mr. Vredenburgh:

Q. If this stock, Mr. Vredenburgh, was in the possession of the bank as collateral security, how did it get from the bank to you as collateral security for the $24,000 note of Shaw? A. It didn't get to me.

Q. How did it get as collateral for the Robert L. Shaw note of $24,000? A. By releasing the two mortgages and turning the stock over to Mr. Shaw.

Q. Releasing what two mortgages? A. The two $12,000 mortgages. It was turned over to Mr. Shaw. The stock was turned over to Mr. Shaw, and held there for his two notes.

Q. Held for what two notes? A. Shaw's notes.

Q. Shaw gave a note, on April 23rd, 1900, you say, for $24,000? A. Yes, sir.

Q. And this stock was passed by the bank from the ownership of Denton, or from its possession as agent of Denton to secure a general indebtedness of Denton, as a security for Shaw's note? A. Yes, sir.

Q. Now then, I want to know how that happened? A. It was done, that was how it happened.

Q. Well, who did it? A. I did it.

Q. How could you do it, it was not yours to do?

A. It was Mr. Denton's, and Mr. Denton agreed to it.

Q. Where was he when he agreed to it? A. My recollection is he was in the bank; I won't be positive.

Q. What day was it he agreed to it? A. I could not tell you now.

Q. What did he say, and what did you say, about it? A. I do not recollect that now, sir.

Q. Have you any recollection of ever saying a word to him about it? A. Yes, sir.

Q. You have? A. Yes, sir.

Q. You can recollect some things then eleven years old? A. When my attention is called to it; yes, sir.

Q. And you can recollect that you did speak to him about transferring the 100 shares of Second National Bank stock from being security for a general indebtedness of Denton to being security for this $24,000 note of Shaw? A. Yes, sir; I am positive of that.

Q. You cannot tell what he said? A. No, sir; I cannot.

Q. Now, that Shaw $24,000 note, I understood you to say, was substituted for a note of Littell; is that right? A. No, it was not substituted for a note of Littell, it was a loan made on the $24,000 note, and the proceeds went to me, and I paid the Littell loan.

Q. Well, I understood you to say that Littell was really yourself? A. Yes, sir.

Q. Now, won't you turn to that part of the ledger where you paid the Littell note? A. (Witness points to page 17 of the book labelled "General Ledger No. 7," to the second column, and indicates the following items: "July 24, 1900, G.

W. Littell, $21,356.00; July 24, 1900, G. W. Littell, $3,644.00."

Q. Who was Littell? A. He was a friend of mine.

Q. Where does he live? A. He lived out here in Jersey.

Q. What was his business? A. Oh, I don't know what his business was.

Q. He was a clerk in a Wall Street house, wasn't he? A. I think he was.

Q. West's? A. Yes, sir.

Q. At $25 a week? A. I never asked him.

MR. LANE: I object to that, because it is admitted that it was Hogencamp's indebtedness. What can be the purpose of cross examining on that point?

THE VICE CHANCELLOR: I overrule the objection.

Q. Was there any other dummy used by you at that time with which to borrow money from the bank for yourself?

MR. LANE: That is objected to as immaterial.

THE VICE CHANCELLOR: In view of the allegation of these parties that Denton and Shaw were so used by him, I shall overrule that objection.

A. Not that I know of.

Q. Of course you did not conceal from the other directors that you were borrowing money under the name of Littell, did you? A. No, sir.

Q. They all knew it? A. Yes, sir.

Q. I call your attention to a previous Littell item on the 29th day of June, 1900, where there

seems to have been taken out of the bank $21,356 under the name of Littell? A. Yes, sir.

Q. Was that taken out by you for your purposes? A. That is the same transaction.

THE VICE CHANCELLOR: You have not answered the question. (Question repeated).

A. Yes, sir.

Q. I call your attention to a discount to a man by the name of York, for $21,166.84,—was that this same York that was used in these transactions in New York? A.Yes, sir.

Q. And was that money for you? A. That money was for Denton.

Q. And you used York's name to get money out of the bank for Denton, did you? A. Yes, sir.

Q. What security did York give? A. I don't recollect now.

Q. Did he give any? A. I couldn't recollect.

Q. Did the directors know that was going on too? A. All those things was read off to the directors.

Q. Now, that was not the same item renewed under the name of Littell, was it? That is another item, is it? A. No, I think was another item.

Q. Now, I call your attention to December of that year, 1900, to three items reading as follows: "December 20. G. W. Littell, 8100; December 31, do. 9400; do. do. 6600"—were those loans made in the name of Littell for your benefit? A. I think they were.

Q. Any security for them at all? A. I do not recollect now.

Q. This amount that you said you obtained for Denton in the name of York, where did that go into Mr. Denton's account? A. I cannot recollect now.

Q. Can you show that it went to Mr. Denton's account? You make the assertion that it did? A. I think it was for Denton. It has been so long ago, I say I think it is for Denton; it is barely possible that I may be mistaken; I do not recollect now; it is a good many years ago.

By The Vice Chancellor:

Q. I know, but having said that, Mr. Vredenburgh says cannot you show from the books whether it is true or not? It is not likely that such a large sum was handed over the counter in cash, it was probably by a check; if so, it probably went to his account?

Mr. Lane: That is a carry-over, your Honor.

The Vice Chancellor: I thought so too, but Mr. Vredenburgh seems to think differently.

Q. Now, what Mr. Vredenburgh wants you to do is to answer his question, which was, having said that that money loaned to York was for Denton's benefit, turn to the books and show where Denton got the benefit of it? A. I have not got the account of Denton here for that year. The book will have to be brought up from the bank.

By Mr. Vredenburgh:

Q. As I understand you, Mr. Hogencamp, that York was the gentleman that you described as being an employe of the bank? A. Yes, sir.

Q. Now, why was it necessary, Mr. Hogencamp,

at the time you say this York money was obtained, to use the name of York to get money out of the bank for Denton? A. I don't know how much discount Denton had at that time.

Q. Well, you said it was for Denton—you have not shown it was for Denton, but if it were for Denton, why did you go through that form? A. The only reason I can think of now was that Denton's indebtedness was so large that we did not want it to appear any larger; that is all I can give for it now.

Q. What do you mean by that, not appear to the directors or not appear to the examiners, or who was it you wanted to conceal it from? A. Didn't conceal it from anybody, excepting trying to comply with the law that they should not use any more than so much on any one man's name.

Q. Does it comply with the law for the president to get money out of a bank under the name of a dummy? A. Well, it was done, and done frequently.

Q. This $24,000 note given by Shaw, that you say was given on July 23rd, 1900, have you any evidence at all, except your own assertion, that that was secured by the 100 shares of stock which you said you had sold to Denton in the April previous? A. I have no evidence outside of that.

Q. That $24,000 note remained in the bank, you say now, until August, 1902, and then there were two notes given, one for twelve and one for thirteen thousand by Shaw?

THE VICE CHANCELLOR: August 27th, 1902, is what you have said; at least, one was August 27th, 1902, and the question is whether the other was not June 30th.

MR. LANE: It was dated June 30th, as a fact.

A. Yes, sir.

Q. The twelve thousand dollar one was delivered by you to him on August 27, 1902? A. I do not understand that on August 27, 1902, there was a twelve thousand dollar note.

Q. Yes, I understood you to say that was given to you sometime about that time, either then or in June—that was dated June, wasn't it, that note? A. There was a twenty-four thousand dollar note that was credited on the 28th day of August, 1902, and the same day he was credited with two loans, one of thirteen thousand and one of twelve thousand.

Q. Now, the twelve thousand dollar note I understood you got from Shaw?

THE VICE CHANCELLOR: This twelve thousand dollar note that is here, discounted by the bank.

A. The bank got it from Shaw.

Q. Well, didn't you do it—weren't you the man who did it? A. What, signed the note?

BY THE VICE CHANCELLOR:

Q. No, weren't you the person that got the note from Shaw—weren't you the individual that got the note and put it in the bank, and saw to the substitution? A. No, sir; I don't think I did.

BY MR. VREDENBURGH:

Q. Who did do it? A. I think I got the note from Mr. Denton; that is my recollection.

Q. Well, you got the note, then, from Mr. Denton? A. That is my recollection.

Q. And what did you do with it—I am asking you now more particularly about the twelve thousand dollar note—what did you do with it? A.

The twelve thousand dollar note was charged to call loans, and credited to Mr. Shaw.

Q. What was done with the note? A. It was in possession of the bank.

Q. You gave it to the bank, did you? A. Why, certainly.

Q. That was Shaw's note, payable to himself, wasn't it? A. I think so.

Q. And what collateral was there to secure that note? A. I don't recollect now.

Q. Well, try and find out what collateral there was. Well, perhaps I will suggest to you that: Was it not the mortgage, the Lakewood mortgage? A. Well, you have the dates there, Mr. Vredenburgh; I think it was.

Q. What? A. I think it was the Lakewood mortgage and the other mortgage.

Q. This very mortgage that we are foreclosing now,—is that the one you say? A. Yes, sir.

Q. Where does that appear in the books of the bank?

THE VICE CHANCELLOR: That the mortgage was there as collateral?

MR. VREDENBURGH: Yes.

A. It doesn't appear in the books of the bank.

Q. Where does it appear that the note was in the bank, for twelve thousand dollars? A. This entry here (witness points now to an entry under date of the 28th day of August, 1902, on page 19 of the General Ledger No. 7, under the title of call loans).

Q. Wasn't it customary, when a security was used as collateral to a note, to state in the note that it was secured by this collateral? A. It was done both ways.

Q. I ask you whether it was not usual? A. No.

Q. Did you ever know of a promissory note, except this one, that was secured by stock, in which the note did not contain the power on the part of the bank to sell the stock if they chose when the note was not paid? A. Yes, yes, I am sure that was done in numerous cases.

Q. Why?

THE VICE CHANCELLOR: Do you mean why is he sure, or why was it done?

Q. Why was it done? A. Well, that was the way of doing business down there.

Q. How could you sell the collateral unless you had that agreement? A. Well, probably we could not.

Q. Well, in this case it was done. Now, Mr. Hogencamp, do the minutes of your bank, of the directors meeting, show that at that time this note was secured by this collateral? A. No, sir; I am sure it don't.

Q. I call your attention to your testimony in the trial of the Richards vs. Shaw case, at the first hearing in 1907, May 14, 1907, and I will ask you whether you testified as follows with respect to the twelve thousand dollar note—

THE VICE CHANCELLOR: Of whose,—Shaw's?

MR. VREDENBURGH: Well, I don't know, I will read it (After examining the minutes referred to) with respect to the thirteen thousand dollar note:

Q. "Q. Was there any talk at that time about any other mortgage upon this property, on the date this mortgage, Exhibit 1 of Complainant,

was executed? MR. VREDENBURGH: I object. Talk between whom? THE COURT: Between Mr. Shaw and these people. That is proper. A. I don't know that there was any talk about it. There was a mortgage of $12,000 in existence at that time. Q. What became of that mortgage? A. That was surrendered to Mr. Shaw at the time this $13,000 mortgage was executed, either then or thereabouts; it may not have been that particular day, but it was just about that time. Q. Who surrendered it? A. I did. Q. Had it been recorded? A. That never was recorded, no. Q. Have you seen it since the time you surrendered it to Mr. Shaw? A. I have not. MR. CAREY: (To Mr. Vredenburgh). I ask you then to produce that mortgage. MR. VREDENBURGH: Oh, we never had it. Mr. Shaw swore he never had it, and he never surrendered it to us. Q. Who had given that mortgage? A. Robert L. Shaw. Q. And what for? MR. VREDENBURGH: I object to that. There is no such mortgage in existence, and never was. I object. He ought to produce the mortgage. THE COURT: His answer to that is that the paper he is talking about is in your possession. MR. VREDENBURGH: Then produce the record of it. THE COURT: He says it never was recorded. I will have to take the testimony for what it is worth. A. As security for a loan. Q. Loan of how much? A. $12,000. Q. When had that loan been made? A. Oh, probably a couple of years before that. It had been running along for quite some time. Q. Whom had the loan been made by? A. Made by the Second National Bank. Q. Was anything said about that loan at the time of the execution of the $13,000 mortgage? A. No, not that I recollect. Q. Did the execution of the $13,000 mortgage have any

relation to that loan? A. Yes, it took up the previous mortgage. By The Court: Q. Had this previous loan that you speak of been evidenced by any obligation of Mr. Shaw's? A. It had; yes, sir. Q. What sort of an obligation? A. His note. Q. And to whom was that note made? A. I do not recollect now. Q. Well, what became of that note? A. Why, those notes were surrendered from time to time; sometimes they were renewed, and the old ones given up and new ones taken." Now, did you swear to that? A. Have you got the affidavit here?

Q. Yes, I have got the minutes here.

The Vice Chancellor: He has read you from what purports to be a copy of the minutes of the trial, and he asks you whether you swore to those answers in answer to those questions at that trial.

Mr. Vredenburgh: I did not read it all:

Q. (Resuming reading). "Q. What became of it finally, up to the time this mortgage, Exhibit 1 of Complainant, was executed; what became of the note that was then in existence evidencing this loan to Mr. Shaw? A. Those were surrendered to Mr. Shaw"? A. If those minutes are correct, I will stand by it, of course; I don't know whether they are correct, or not.

Q. Where is the evidence of those notes—of that twelve thousand dollar loan secured by an unrecorded mortgage from Shaw to the bank? A. It is on the ledger here.

Q. Can you find any such? A. I can find the charge in the Loan Account.

By The Vice Chancellor:

Q. That is what he wants to know,—where is

the charge in the Loan Account of any twelve thousand dollar note of Shaw's previous to the twelve thousand dollar note upon which money was loaned on August 27th or 28th, 1902? A. I do not recollect now. I cannot tell from the books here now. I know there was loans to Shaw of twenty-four thousand dollars, whether it was in one note or two notes—

Q. We have already got the one note here in evidence; that cannot be changed; there it is—one solid, single piece of paper for twenty-four thousand dollars: Now, Mr. Vredenburgh has read your testimony in which you said that before you got this thirteen thousand dollar mortgage on the 27th day of August, 1902, that you had a twelve thousand dollar mortgage, made by Shaw, to secure a twelve thousand dollar note made by Shaw, and at that time you say you gave up that note and that mortgage to Shaw; now, Mr. Vredenburgh says where can you find there was any such note in the bank? You say you can find it on the Loan Account—he asks you to point it out on the Loan Account; where is it?

MR. VREDENBURGH: I understood you to say you said all that as being the truth?

A. To the best of my recollection at that time, I say. I say right here now there was a charge to Shaw before of twenty-four thousand dollars, whether I was mistaken in that being one note or two notes, at this time I cannot say.

Q. The piece of paper is here, and we have all looked at it, and it is only one note; there can be no dispute about it by any human, living being; we see it right here before us, Mr. Lane has it right here before us, and it is one single note.

THE WITNESS: What was the date of it?

MR. LANE: July 23, 1900.

A. Well, that is correct.

Q. That is not two notes, is it? A. No.

Q. That is one single note? A. That is one single note.

Q. Now, do you find on your books, any place under Call Loans anywhere, between the date of this note, July 23, 1900 and August 27, 1902, that you advanced any twelve thousand dollars to Shaw on any note of Shaw's? A. No, sir.

BY MR. VREDENBURGH:

Q. Mr. Hogencamp, on January 27th, 1905, you say that there was a credit of $7,652.80 endorsed on the $13,000 note which is now produced, Exhibit 15? A. Yes, sir.

Q. The note is dated July 9, 1901: Turn to that entry, will you that credit? A. There would be no entry of it here.

BY THE VICE CHANCELLOR:

Q. In the bank books, you mean? A. In the bank books.

BY MR. VREDENBURGH:

Q. Why not? A. That was my personal note; it belonged to me personally.

Q. Yes, but you received at that time this seven thousand dollars, you say, in some way?

THE VICE CHANCELLOR: Well, he has told you how he got it; he sold the stock, he said, at that time, and then when he did other things with the money he had $7652.80 left which he assumed belonged to Denton, and he credited that on what Denton owed him on that note. (To the witness). That is your testimony, is it not?

THE WITNESS: Yes, sir.

Q. Turn to the date of September 7, 1905, in your account, and see what entry is there on that date?

THE VICE CHANCELLOR: In his account with the bank, you mean?

MR. VREDENBURGH: In his account with the bank.

A. (The witness now consults Individual Ledger, A. to L., No. 19, and looks at his account which is on page 794, and looks at the date which counsel requests, which is September 7, 1905).

BY THE VICE CHANCELLOR:

Q. What side will show what you paid out? A. Right here (indicating).

Q. I see on that date you paid a check for $38,802.95; whom did you pay that to? A. I do not recollect now; it may have been one item or five items.

BY MR. VREDENBURGH:

Q. Mr. Hogencamp, don't you know you paid that to the bank—haven't you testified to that? A. I say I do not recollect now who I paid that to, or whether it was one item or five items.

Q. Whom did you pay it to? A. I don't remember.

Q. I read from your testimony, page 347 (Minutes of hearing of the case of Richards vs. Shaw, May 8, 1908): "Q. (By Mr. Hudspeth). On page 794 of the Individual Ledger A. to L. No. 19, of date of September 7th, 1905, is the item $38,802.95, debited against your account—what was that for? A. Paying the Second National for some items charged into suspended debt ac-

count which I took up and took away"? A. Well, if I testified there it was right; I probably had that data before me then; I haven't got it here now.

Q. I read the next question: "Q. Which ones, which items? A. Well, they were mixed up there. I took the Shaw matters of $25,000 and made a general clean-up of everything to the extent of $35,000"—do you remember testifying to that? A. I guess I did; I do not recollect it now, but you say it is there.

Q. Mr. Hudspeth then asked you "But you did take up the Shaw matters? A. I did. Q. What did you get when you took up the Shaw matters? A. I got Shaw's note for $13,000, and one for $12,000, and the Lakewood Mortgage and the mortgage on the stable property,"—is that so? A. I got them, and I didn't get them. I left them with the bank as security for moneys that I owed them.

Q. Where did you get the $35,000 from that you paid at that time—does the book show? A. No, sir.

Q. Well, in 1907, at the hearing then had before the Vice Chancellor, you were asked this (page 47, Minutes of hearing of May 14, 1907) "Q. In what way did the corporation act, if you know? A. They received the money for it. Q. From whom? A. From me, personally. Q. And did you say it in full, do you mean? A. In full. I did, yes. Q. And was it then transferred by virtue of that fact? A. By virtue of the fact that the bank received the money,"—do you remember testifying to that? A. I don't remember it, no.

Q. Mr. Hogencamp, won't you now turn to General Ledger, No. 8.

MR. LANE: We have not got No. 8 here.

Q. When after August 27th, 1902, did the Shaw $12,000 note again appear in the books, in this ledger? A. I think it appeared right along there.

Q. Well, now, trace it down, won't you?

THE VICE CHANCELLOR: Just tell him when next it appeared after August 27th or 28th, 1902.

A. Oh, I am now speaking with respect to the Call Loan Account. It does not appear in this ledger account at all. This is up to December, 1904.

THE VICE CHANCELLOR: This book which the witness has been looking at, No. 7, General Ledger, goes up to December, 1904, and up to that time the $12,000 note does not appear again in Call Loans.

Q. Does it appear in Suspended Debt Account? A. I do not think there is any Suspended Debt Account in this ledger.

THE VICE CHANCELLOR: You are mistaken in saying that it does not appear again, it does appear again on page 21.

THE WITNESS: Well, this is the credit.

THE VICE CHANCELLOR: Ah, but he did not ask you about which side it appeared on, he asked you when it appeared again.

THE WITNESS: Oh, December 31st.

THE VICE CHANCELLOR: What year?

THE WITNESS: 1904.

Q. Well, was it paid off at that time? A. It was credited.

Q. Credited as paid, on the books of the bank? A. Well, the form of it was changed.

Q. Was it credited as paid on the books of the bank? A. It was credited to Call Loan Account.

Q. Was it credited as paid on the books of the bank?

MR. LANE: I object to that on the ground that it is answered; he has answered it two or three times; he has said it was credited, as paid, to Call Loan Account.

THE VICE CHANCELLOR: I sustain the objection. The witness has said that the bookkeeping item at which he looked showed that it was credited on the Call Loan Account.

Q. Please turn to the item, page 21, again, and show me what entry there is on that book to show that it has gone to—

THE VICE CHANCELLOR: He did not say it went to any account, he said it was credited as paid on Call Loan Account. You keep asking him whether it was credited as paid on the books of the bank, and they are very different things.

Q. Well, how is it shown on this book to be credited to Call Loan Account? A. It is shown here as credited to Call Loan Account (indicating the Call Loan Account in the ledger).

BY THE VICE CHANCELLOR:

Q. This is the Call Loan Account, is it? A. Yes, sir.

Q. And on the one side is the item which you make when the bank advances money to a man on a note payable on demand, is it not? A. Yes, sir.

Q. And on the other side is the entry that you make when that particular note is taken care of—paid? A. Yes, sir.

Q. Or in some other way provided for? A. Taken out of Call Loan Account; yes.

By Mr. Vredenburgh:

Q. Where does it next appear that it was taken out of Call Loan Account on that date—where does it ever again appear on any of the books of the bank? A. It appears in Suspended Debt Account.

By The Vice Chancellor:

Q. In the same book, that is, General Ledger No. 7, page 129, under the heading "Suspended Debt Account"—now, please indicate the item? A. Here it is (Witness points to item under head of "December 22, 1904. R. L. Shaw, $25,375."

By Mr. Vredenburgh:

Q. Where does it next appear? A. I don't know. It would not be on this ledger; that was the end of it here. I imagine it is on the next ledger, but that is mere supposition.

Q. You imagine it is where? A. On the succeeding ledger.

Q. What ledger is that? A. No. 8.

Ledger No. 8 shown the witness.

Q. Do you find it? A. (Referring to ledger No. 8). I find an item entered under the head of Suspended Debt Account, "January 3d, $142,003.33"; it looks as if the items were bunched up.

By The Vice Chancellor:

Q. Well, there is nothing to show that the Shaw account was part of that, is there? A. Nothing particular here.

Q. For all that appears there, the Shaw notes

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might have been paid and taken out of the bank before that time? A. Yes, I don't know anything about that.

By Mr. Vredenburgh:

Q. I will read you from your testimony in the Richards vs. Shaw case, to refresh your memory about it, Mr. Hogencamp (page 345) "By Mr. Hudspeth: Q. Since recess, have you made an effort, with Mr. Hasking, to ascertain what became of the notes for $13,000 and $12,000 of Shaw after December 31, 1907? A. I have, yes. Q. And what did you ascertain? A. I paid the—Q. One minute now; get the thing in historical order: After December 31, 1904—The Vice Chancellor: That is the time that it appears on the Call Loan Account of Ledger No. 7, that the $25,000 of notes charged against Shaw had been paid off: Now, then, he wants to know what you have ascertained happened after that? A. They were charged into Suspended Debt on the 31st day of December. By The Vice Chancellor: Q. At the same time that they appeared to have been paid off on the account called Call Loans, they appear in an account called Suspended Debt, do they? A. Yes. Q. And that is contained in General Ledger, No. 7, at page 129? A. Yes, sir. Q. Now, go right on—what happened after that,—after they were charged on that page what happened? A. I took them up myself. Q. When? A. On the 7th of September, I think it was. Q. 1900, or what year? A. 1905. Q. How? A. By giving my check for it. Q. In other words, you paid the bank for this $25,000 worth of notes of Shaw's? A. And some others. Q. And those notes then belonged to you? A. They belonged to me"—did you testify in that way? A. If you

say so, and it is there, I presume I did. But I want to say that if I did, I testified under a misapprehension.

Q. (Resuming reading from the Minutes, at page 346). "By Mr. Hudspeth: Q. Now, will you point out the check or draft that you gave the bank for the moneys covering these notes? The Vice Chancellor: You do not mean that. You are not asking him to produce the draft? Mr. Hudspeth: The entry, at least. The Vice Chancellor: He means, turn to the book of the bank called the individual Ledger Account, and show where you were charged with the amount of money that you paid for those notes? (To counsel). We have already had that from Mr. Hasking's testimony—why is it worth while to have it twice over? It is not disputed that it is in the book. Mr. Hudspeth: Well, if the Court is satisfied. I only wanted him to swear to his own personal knowledge, because your Honor asked for parol evidence of the items in the book, as they did not explain anything. * * * Q. On page 794 of the Individual Ledger A. to L., No. 19, of date of September 7th, 1905, is the item $38,802.95, debited against your account—what was that for? A. Paying the Second National for some items charged into Suspended Debt Account which I took up and took away. Q. Which ones—which items? A. Well, they were mixed up there. I took the Shaw matters of $25,000 and made a general clean-up of everything to the extent of $35,000,"—did you swear to that? A. I imagine I did.

Q. And you thought it was true at the time you swore to it? A. I believed it at that time, but I got mixed up on it. As a matter of fact,

those notes were not paid, and they are not paid yet. I guaranteed them.

Q. You were present when Mr. Hasking was sworn, too—you were there while Mr. Hasking was being sworn? A. I am not so certain about that, but I won't deny it.

Q. Did you hear Mr. Hasking swear to this (page 327, Minutes of hearing Richards vs. Shaw, May 8, 1908) "By Mr. Hudspeth: Q. Since recess, have you made an effort to ascertain how the notes for $13,000 and $12,000 were marked as paid on the Ledger? A. I have. Q. Were those notes actually paid or not at that time? A. They were written off on December 31st. Q. Just answer that question: Were they actually paid at that time or not? You know what payment means. A. Yes, I know what payment means. I should say no. Q. How do you account for this entry that your attention was called to, on the credit side of the General Ledger No. 7, page 21, under date of December 31, 1904? A. We credited Call Loan Account and charged the amount to Suspended Debt Account (Witness points to page 129 General Ledger No. 7, to the item 'R. L. Shaw, $25,375.') Q. What have you got to say about the transference to the suspended account of the item that your attention is called to, to wit, the $13,000 and the $12,000 notes? Mr. Vredenburgh: May I ask whether this witness did it, or has any knowledge about it at all? Of course he finds it there in the book, but has he any more knowledge of it than I have, except that he sees it in the book? The Vice Chancellor: I will let you cross examine. By Mr. Vredenburgh: I will ask you now, Mr. Hasking, whether it is in your handwriting?—

THE VICE CHANCELLOR: Why bother with that; why not get down to the gist of the thing? If he was allowed to testify, well and good; if he was not, then there is no use in reading it.

Q. I call your attention to this part of it (continuing to read from the minutes, page 329) "BY MR. VREDENBURGH: Q. In the first place, how do you know that? A. Well, I was present at the time. Q. At what time? A. At about December 27th or 28th, when the Examiner had charge of the Second National Bank's assets, books and papers. Q. Do you mean the United States Examiner? A. The United States Examiner. Q. You were present? A. Yes. Q. And what occurred with reference to the $25,000 entry? A. He ordered that paid out of the Surplus Fund, the surplus of the bank. BY THE VICE CHANCELLOR: Q. Was that done? A. That was done, yes, for the time being. Q. That is to say, or do you mean to say that $25,000 was charged against Surplus and was credited in the Call Loan Account and was debtor in the Suspended Debt Account? A. In the Suspended Debt Account": Do you remember, Mr. Hogencamp, that Hasking swore to that? A. I do not.

Q. Do you remember that that occurred?

MR. LANE: I object to that.

Q. Do you remember that the Bank Examiner, in December, 1904, had charge of the Second National Bank's assets, books and papers? A. No, sir; I do not remember any such thing.

Q. You do not remember whether the Bank Examiner had charge of your papers? A. Yes, sir, I do not remember any such thing; he was

making an examination, but he did not take any charge of it.

Q. At that time? A. No; he never did take charge of it.

Q. Did he insist, at that time, on that account being charged off from the Surplus? A. As I recollect, he went behind the counter and directed the bookkeeper to make certain entries—

Q. Yes. A. Which was done.

THE VICE CHANCELLOR: Read the witness the question.

Question repeated, as follows:

Q. Did he insist, at that time, on that account being charged off from the Surplus?

THE VICE CHANCELLOR: That $25,000 Shaw item? A. Not to me.

Question again repeated at the direction of the Court.

A. Not that I know of.

Q. Is this true—I read from Mr. Hasking's testimony: (p. 332) "A. When the President came out of his office in the afternoon, about six o'clock, and said that the Examiner wanted these entries made and he wanted them made in the book before he left,"—did that occur? A. I think they were made before he left.

Q. Well, did you go out of the office and tell Mr. Hasking that? A. I do not recollect it.

BY THE VICE CHANCELLOR:

Q. You mean you do not recollect whether or not that is the fact? A. I do not recollect whether or not that was the fact.

Q. And yet you do recollect that the examiner

did not say to you that those items would have to be charged off? A. Yes, sir.

By Mr. Vredenburgh:

Q. (Resuming reading from Minutes, p. 332): "Q. Then you did not hear it from the examiner at all, but from Mr. Hogencamp? A. Mr. Hogencamp told me that the examiner ordered those out of the Call Loan Account"—was that untrue? A. I do not recollect any such thing.

By The Vice Chancellor:

Q. But you do recollect that the examiner never did tell you that the $25,000 must be taken out of the Call Loan Account,—is that correct? A. Yes, sir.

By Mr. Vredenburgh:

Q. Did you tell Mr. Hasking that he did? A. I have no recollection of telling Mr. Hasking any such thing.

Recess until Tuesday, September 20, 1910, at ten o'clock, A. M.

Jersey City, N. J., September 20, 1910.

Hearing of the cause resumed at ten o'clock, A. M.

WILLIAM HOGENCAMP, recalled.

CRFSS EXAMINATION RESUMED BY MR. VREDENBURGH:

Q. Mr. Hogencamp, do you recollect whether the stock handed by you to Mr. Denton, you say in April, 1900, was evidenced by one certificate of the Second National Bank for 100 shares, or by more than one certificate making up 100 shares? A. I do not recollect the details of it.

Q. I show you an advertisement of sale by Peter B. Olney, Referee, dated March 13th, 1900, in a suit in which William Hogencamp is plaintiff against Stephen D. Pierce and others, and I will ask you to refresh your recollection from that and tell me whether you do not now recollect that you did foreclose a mortgage in New York prior to April, 1900? A. I do not recollect this transaction, but from the printed description of it here I should say that that was correct.

Q. You were the plaintiff who foreclosed the mortgage—you were the plaintiff in the suit? A. I imagine I was; yes, sir.

Q. Well, don't it say so (referring to the advertisement)? A. It says so here, yes, sir.

Q. Well, have you any doubt about it? A. No, not now.

Q. Do you remember what mortgage that was you were foreclosing? A. Only as it says here.

Q. Well, look at it and see whether it is your mortgage, or whether it was somebody else's mort-

gage in your name that you were foreclosing? A. 68th Street and West End Avenue?

Q. 68th Street and West End Avenue, New York City? A. Yes, sir.

Q. Now, then, did you own a mortgage on that property? A. It must have been in my name, certainly.

Q. It was in your name—you would know whether you owned it, or not, or whether somebody else owned it, wouldn't you? A. Well, my holdings there was as trustee for Mr. Henry M. Denton.

Q. Then this foreclosure was a foreclosure in your name as trustee for Henry M. Denton, was it? A. I think it was.

Q. Do you recollect being present at the sale and bidding? A. I do not, now.

Q. Did you buy the property in at West End Avenue—this property? Did you buy it at that sale? A. I do not recollect, sir.

Q. You might have done so? A. I might.

Q. But you have no recollection of it? A. I have no recollection of the transaction now, excepting from that memorandum?

Q. Apparently it was sold April 10th, 1900, purchased by William Redfield: Do you recognize the signature here to the purchase? A. It is "William H. Redfield by Henry M. Denton, Attorney."

Q. Do you recognize that signature? A. I recognize Mr. Denton's writing.

Q. And do you know whether that was bought in for you, or not, now? A. Well, if it was bought in there, it was bought in for me as agent, as trustee for Mr. Denton.

Q. It was bought in for you as trustee? A. I

presume it was; I don't know; I say I have no recollection about the sale; but if it was sold (and I do not say that it was or was not, because I do not recollect it) but if it was bought in by me, it was for Mr. Henry M. Denton, or Mr. Redfield, who was Mr. Denton under another name.

Q. You are sure that if it was sold it was bought in for you by Mr. Denton acting as attorney for somebody—Redfield, eh? A. Well, you say it was bought in by me.

THE VICE CHANCELLOR: He is asking you the question, Mr. Hogencamp.

Question repeated.

A. If it was bought in by me, I certainly bought it in for Mr. Redfield or Mr. Denton, who were the same person. I don't know who made the actual bidding. Mr. Denton signed this as attorney for Redfield.

Q. It admits a receipt—

THE VICE CHANCELLOR: That paper had better be marked with your initials, Mr. Vredenburgh; you say "it admits," and that does not mean anything on the record—let it be marked J. B. V, 1.

The paper was so marked.

Q. This paper, J. B. V, 1, admits the receipt of $925, ten per cent. of the consideration money bid at the sale—did you advance that? A. I do not recollect now, sir, without looking it up.

Q. Cannot you tell in some way? Here was the purchase of a property for $9,250, subject to mortgages aggregating over $70,000—do you mean to say you cannot recollect anything about such a sale as that? A. Well, I had so many—

THE VICE CHANCELLOR: No, answer the question.

A. Well, no.

BY THE VICE CHANCELLOR:

Q. Mr. Hogencamp, I do not understand that last answer; do you mean that you can recollect, or that you cannot recollect? A. I mean that the transactions, Judge, or your Honor, were so numerous with Mr. Denton—

Q. Why don't you answer my question (Court's question repeated). A. I cannot recollect now.

BY MR. VREDENBURGH:

Q. Do you recollect the property mentioned herein, namely, on the corner of 68th Street and West End Avenue, New York City?

THE VICE CHANCELLOR: Do you recollect anything about that property, whether you ever saw it, or had any interest in it, or do you recollect anything about it?

A. Yes, sir; I recollect that corner.

Q. What do you recollect about it? A. Well, it was property that belonged to Mr. Denton; and, from that memorandum (referring to J. B. V, 1), it was being foreclosed.

BY THE VICE CHANCELLOR:

Q. All right, is there anything more? He wants to know what else you recollect about it? A. Well, I have a memorandum here that I have discovered last night about one o'clock.

THE VICE CHANCELLOR: (To Mr. Vredenburgh): Have you any objection to his refreshing his recollection from the memorandum?

MR. VREDENBURGH: I have not.

A. I don't know; it says "68th Street, sold for $60,750, less mortgage $25,000; less mortgage $10,000; Account of contract, $44,000," leaving a balance of $16,750, to which was added "insurance $98.66, 'making' $16,848.66." Then on the other side "Deduct Commission, $607.50; interest $343.75; do. $326.60; Fire escape, $30; retained $500, total, $1,807.85; cash, $15,040.81; total, $16,848.66," the same as on the other side.

BY MR. LANE:

Q. One minute: Have you finished it yet? A. Then it says, "Paid Shotwell Mortgage, $10,000; interest $256; account of mortgage, $1,000; interest, $10, total $11,266."

BY THE VICE CHANCELLOR:

Q. Is that all there is on the memorandum? A. That is all there is on the memorandum; yes, sir.

BY MR. VREDENBURGH:

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

Q. Will you let me look at it? A. Certainly (handing the paper to examining counsel).

Q. Can you tell the date when that mortgage was made? A. It was made about the time.

Q. About what time? A. The time of the sale of the property, whenever it was.

Q. The sale by whom to whom? A. The sale under a foreclosure.

Q. Do you mean that that represents the figures of the sale under the foreclosure, or of a subsequent sale by you? A. The sale under the foreclosure, I should say, or a subsequent sale—well, I don't know how that was.

Q. Is it not very evident, by looking at those items, that it means a subsequent sale? A. My recollection is now (it is very faint on it), but my recollection is that that property was subsequently sold.

Q. It was bought in by you and subsequently sold, wasn't it, by you? A. I don't know whether it was bought in by me, or not, or whether it was bought in by Mr. Redfield, as he signed the terms of sale. Now, if it was sold, it would be sold by him.

Q. Well, why did you make so accurate a memorandum of that kind, if it was sold by him? A. Well, I made memoranda of pretty much everything I did for Mr. Denton, because the transactions were very numerous.

THE VICE CHANCELLOR: I think that the counsel and the witness are at cross purposes, and that they practically each mean the same thing, but that they miss each other's meaning. See if this is not correct, Mr. Hogencamp:

Q. (BY THE VICE CHANCELLOR): I understood you to say that as far as your memory now bears any recollection of this matter, it was bought in at the foreclosure sale for Mr. Denton for whom you were acting as trustee, and that when it was subsequently sold the proceeds went through your hands as trustee for Mr. Denton—is not that what you mean? A. That is what I mean, yes, sir.

THE VICE CHANCELLOR: So, when he says "if Redfield bought it, Redfield sold it" what he means is the mere physical signing of the papers—that Redfield had

to sign the papers because this man had no legal title; he don't deny your imputation that he got the proceeds and must account for them.

Q. (By Mr. Vredenburgh): Now $11,266, the last figures on the memorandum, represent the cash balance that came from Redfield or somebody else to you, don't they, as trustee for Denton? A. No, sir.

Q. What does it represent? A. The $15,040 came to me.

Q. Yes, the $15,040 came to you. A. Yes.

Q. Now, whom did the $11,266 come to? A. It went to Mr. Shotwell; it was paid out to Mr. Shotwell.

By The Vice Chancellor:

Q. Wasn't it paid out of the $15,040? A. Yes, sir.

The Vice Chancellor: Then you did not answer the question properly. (Mr. Vredenburgh's question was repeated). That question of Mr. Vredenburgh's confuses a matter which, on the paper, is clear. The paper shows that $15,040.81, out of the subsequent sale of this 68th Street and West End Avenue property came to this witness, and then the paper shows that he credits himself with having paid out of that to Shotwell, $11,266.

By Mr. Vredenburgh:

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

Q. And you retained the balance? A. Yes.

The Vice Chancellor: Wouldn't it be just as well to have that memorandum actually in evidence so that we can use it?

MR. VREDENBURGH: Yes, sir.

The memorandum was thereupon offered in evidence by Mr. Vredenburgh, admitted without objection, and marked J. B. V, 2.

By inspection of the paper shown the witness and marked for identification J. B. V, 1, it appears that the property at 68th Street and West End Avenue was divided into four separate parcels, numbered respectively, 1, 2, 3, and 4, and that the sale of which J. B. V, 1 is the record respected Parcel No. 2. An inspection of the paper J. B. V, 3 indicates that this paper concerns the sale of Parcel No. 3.

Q. I show you a second advertisement marked J. B. V, 3, appended to a receipt, and ask you whether that is the same suit but involving another piece of property? A. Apparently it is, yes, sir.

Q. And the purchase price of that piece appears to have been $10250? A. Yes, sir.

THE VICE CHANCELLOR: The paper speaks of the sale as of the same date, April 10, 1900.

Q. Do you recollect anything about that sale? A. No.

Q. That was bought in for you in the same way as the other, was it not? A. It was bought in by Henry M. Denton, attorney for William H. Redfield. It so says here.

Q. Did you advance the money, the $1,000? A. I do not recollect now.

THE VICE CHANCELLOR: It is not a thousand dollars, it is $1025.

Q. Did you advance the $1025? A. I do not recollect now, sir.

Q. Have you any doubt about it Mr. Hogencamp? A. Well, I do not recollect it.

Q. Well, you know Denton did not advance the money, don't you? A. No, I don't know that; he may have advanced it, and he may not. Probably I advanced it, but I do not recollect it now, how it was.

Q. I show you a third paper for a third of these parcels, marked J. B. V., 4—that sold for $15,100 what do you recollect about the purchase of that piece? A. I do not recollect anything, sir; just now.

Q. That was purchased at the same day? A. It seems so.

Q. At the same place? A. It seems so.

Q. Signed in the same way? A. Yes, sir.

Q. Well, do you mean to say you did not advance the money for that also, then? A. I do not recollect, Mr. Vredenburgh; it is ten years ago.

THE VICE CHANCELLOR: Have you got something here about the fourth parcel, Mr. Vredenburgh?

MR. VREDENBURGH: I haven't it here, sir.

MR. LANE: Well, I will admit that the fourth parcel was treated in the same way if you want me to.

MR. VREDENBURGH: Well, I don't know anything about it.

THE VICE CHANCELLOR: All right; proceed.

Q. Was the fourth treated in the same way, Mr. Hogencamp? A. I believe so.

Q. Well, not having recollected anything about

the three first pieces that we have here, you do recollect about the fourth piece, do you? A. Well, I presume it was treated the same as the others; I have no recollection about it; I imagine it was so.

Q. Mr. Hogencamp, I show you the Certificate Book of the Stock of the Second National Bank, marked "A-1 to A-400, S. N. B": That Stock Certificate Book runs apparently from the 28th day of November, 1882, to the 2d day of December, 1903, is that right? A. Yes, sir; unless there is something more there (drawing the attention of counsel to portions of two pages at the back of the book immediately after Stock Certificate No. A-400).

THE VICE CHANCELLOR: No, those last two are torn off.

Q. And there are apparently two certificates torn out from the back of the book, is that right? A. So it seems, yes, sir.

THE VICE CHANCELLOR: The exhibit now before the witness and under the inspection of the Court shows that the certificates numbered on the stubs and on the certificates from A-1 up to and including A-400 are apparently all in the book, and that apparently there were two other certificates originally in this book, but since the book only purported to be from A-1 to A-400, these two additional superfluous certificates were torn out.

Q. I call attention to the Stock Certificate A-346, the stub of which reads as follows: "No. of Certificate, A-346. No. of shares, 60. To whom issued, Henry M. Denton of Avon, N. J., Dated,

Aug. 12, 1901. Received the above described certificate this 12th day of Aug. 1901, Henry M. Denton," and attached to this is a certificate numbered and for the same number of shares, &c., as just described in the stub: What became of that certificate? A. It was receipted for by Henry M. Denton.

By the Vice Chancellor:

Q. Is that the signature of Henry M. Denton (indicating the signature after the words "Received the above described certificate this 12th day of Aug. 1901)? A. It is.

Q It was issued to and received by Henry M. Denton? A. Yes, sir.

By Mr. Vredenburgh:

Q. To whom did he convey it, or transfer it? A. I cannot tell from here.

By the Vice Chancellor:

Q. And by "from here" you mean from the book? A. From the book.

Q. The back of the certificate, where the power of attorney is printed, is absolutely blank, is it not? A. Yes, sir.

Q. And no memorandum shows how it got from Henry M. Denton back into the book, does it? A. No, sir.

The witness's attention is now called by Mr. Vredenburgh to the next certificate in the book, the stub of which reads as follows: "No. of Certificate, A-347. No. of Shares, 40. To whom Issued, Henry M. Denton of Avon N. J. Dated, Aug. 12, 1901. Received the above described certificate this 12th day of Aug. 1912, Henry M. Denton."

BY THE VICE CHANCELLOR:

Q. Is that Henry M. Denton's signature, Mr. Hogencamp? A. It is.

Q. What became of the certificate? A. It was receipted for by Henry M. Denton and taken away.

THE VICE CHANCELLOR: On the back of this certificate, by inspection, it appears is the usual power of attorney, which is left entirely in blank, excepting the following, which, with printing and written words, reads as follows: "Witness my hand and seal this 12th day of August, A. D., 1901. Henry M. Denton. (Seal) Witness Present, J. G. Robinson." There are five Revenue Stamps of five cents each, all of which are marked with ink as follows: "H. M. D., Aug. 12, 1901." I note, in connection with this, that the previous certificate had upon it three documentary stamps, aggregating $1.20, those of which are not covered by the way in which the certificate is pasted back in the book are cancelled with this writing "W. H. Pt., Aug. 12, 1901."

Q. What did the "W. H. Pt." mean? A. W. Hogencamp, President of the Second National Bank.

Q. And was that writing put on those stamps by you? A. Yes, sir.

Q. Was the "H. M. D., Aug. 12, 1901" cancellation on the Certificate A-347 put on by you? A. That is my handwriting, yes, sir.

BY MR. VREDENBURGH:

Q. I call your attention to the next certificate,

and its stub, No. A-348, the stub of which reads as follows: "No. of Certificate, A-348. No. of Shares, 50. To whom Issued, Henry M. Denton of Avon N. J. Dated, August 12th, 1901. Received the above described certificate this 12th day of August 1901, Henry M. Denton." That is Mr. Denton's signature, is it, Mr. Hogencamp? A. Yes, sir.

Q. I ask you to whom the Company issued that certificate? A. To Henry M. Denton.

Q. And it is receipted for by him? A. And receipted for by him.

Q. I ask you to inspect the back of that certificate, and tell me what it appears therefrom that Mr. Denton did with this stock? A. The blank power of attorney is signed by Mr. Denton so that the printed and written words after the blank power are as follows: "Witness my hand and seal this 14th day of August, A. D., 1901, Henry M. Denton (Seal) Witness Present, F. W. Mattock."

THE VICE CHANCELLOR: There are no Revenue Stamps on this certificate or stub.

Q. I next call your attention to Certificate A-349 and the stub thereof, the latter of which reads as follows: "No. of Certificate, A-349. No. of Shares, 10. To whom Issued, Henry M. Denton of Avon, N. J. Dated, August 12th, 1901. Received the above certificate this 12th day of Aug. 1901, Henry M. Denton,"—is that Mr. Denton's signature? A. Yes, sir.

Q. And I ask you to whom that certificate was issued? A. To Henry M. Denton.

Q. And receipted for by him? A. And receipted for by him.

Q. Now, I ask you to tell us what appears on

the back of the certificate as to the disposition of it by Mr. Denton? A. On the back of the certificate the blank power of attorney is filled up with handwriting so that the whole thing reads as follows: "For value received I hereby sell, assign and transfer to W. A. Williamson, 55 William Street, New York, ten (10) shares of the within mentioned stock, and do hereby constitute and appoint.....attorney to transfer the same on the books of the Bank. Witness my hand and seal this Twelfth day of August, A. D., 1901. Henry M. Denton (Seal) Witness Present, J. G. Robinson. Endorsement guaranteed, F. W. Child & Co., Mathewson." There are five Revenue stamps of five cents each, which bear upon the face of each, in ink, the following "H. M. D., Aug. 12, 1901."

Q. In whose handwriting are those cancellations? A. Mine.

THE VICE CHANCELLOR: Now, before we go any further let us have these certificates and stubs that have been identified put in evidence. Have you any objection, Mr. Lane?

MR. LANE: No,I have not.

THE VICE CHANCELLOR: What I mean is, have you any objection to Mr. Vredenburgh making any offer concerning these certificates and stubs in your case?

MR. LANE: Oh, no.

THE VICE CHANCELLOR: Do I understand, Mr. Vredenburgh that you offer these four certificates and stubs that the witness has identified in evidence?

MR. VREDENBURGH: I do.

THE VICE CHANCELLOR: Have you any

objection to the introduction of these four stubs and certificates in evidence, Mr. Lane?

MR. LANE: No, sir.

THE VICE CHANCELLOR: They will be admitted now, in view of Mr. Lane's not objecting to their being offered in his case, and are now marked concutively, J. B. V-5, J. B. V-6, J. B. V-7 and J. B. V-8.

Q. Is there any other transfer of stock to Denton, other than these that I have called your attention to? A. By referring to the Stock Ledger I can tell.

Q. (Handing witness a book) Is the book which I now hand you the Stock Ledger? A. Yes.

Q. Can you now tell whether there were any other transfers or issuances of stock to Denton excepting the four certificates that you have just identified? A. No, sir; I do not think there were.

Q. Was the stock which it appears was transferred to Denton your stock? A. Yes, sir.

Q. So that on August 12th, 1901 you had transferred to Denton 160 shares of your stock of the Second National Bank, had you? A. No, I had not.

Q. Why not—it appears that there was 160 shares issued to him. A. I transferred to Henry M. Denton, according to the Ledger, 100 shares on August 12th, 1901.

Q. How do you explain, then, these certificates that you have just read, which show the transfer to Denton and the issuance to him of 160 shares? A. My recollection is that the certificates were changed or cut up in different amounts—that is my recollection of it.

Q. That is, the 60 shares were taken back for some reason, and the 100 was then issued in 40, 50 and 10—is that your idea, Mr. Hogencamp? A. Yes, sir.

Q. Will you show in this Certificate Book your shares, returned to the Certificate Book in place of which those shares to Denton were issued—can you do that, Mr. Hogencamp? A. I cannot.

By the Vice Chancellor:

Q. You would have to have what to help you do that? A. I did not keep the Certificate Book—

Q. Oh, no; how would anybody find out from the records of the Bank the answer to that question, which undoubtedly is an answerable question? Is it not always possible in any corporation that even pretends to keep its books properly to tell where stock came from that is issued to anybody? A. If Mr. Hasking kept his Transfer Book as he should have done, yes.

Q. Precisely; then your answer to my question is that the Transfer Book should show it? A. It should show it.

By Mr. Vredenburgh:

Q. There was a Transfer Book, wasn't there? A. Yes.

Q. And it was produced in the other case, wasn't it (referring to the hearing in the case of Richards vs. Shaw)? A. I don't recollect it, but there was a Transfer Book, I know.

Mr. Vredenburgh: Where is the Transfer Book, Mr. Lane?

Mr. Lane: I don't know, but if there is one I will send for it.

Q. I see, in looking at the Stock Certificate Book, that, on the stub there is a pencil memor-

andum showing from where the stock so issued came, that is to say, there is a pencil memorandum on the top of each stub of a new certificate "Old Certificate, No. So-and-so." which, I assume, shows where the stock came from that the new certificate was issued in place of? A. Well, as far as I have seen it, that memorandum is there; of course I have not looked through the whole book.

Q. How does it happen that it does not appear on this 160 shares of stock which apparently was issued to Mr. Denton? A. I don't know.

By the Vice Chancellor:

Q. In whose handwriting are those memoranda, "Old Certificate, No. So-and-so"? Do you konw, Mr. Hogencamp? A. Mr. Hasking's.

Q. It is not yours? A. No, sir.

Q. You had nothing to do with keeping this book? A. No, sir.

By Mr. Vredenburgh:

Q. Now, Mr. Hogencamp, you have produced what you term to be the Stock Ledger (referring to a book now shown the witness)?

The Vice Chancellor: That is not, strictly speaking, true; he has not "produced" anything.

Mr. Lane: And I have not "produced" it, you have taken it.

Q. Well, you have in front of you what you have termed the Stock Ledger of the Second National Bank, and that is a ledger showing the ownership of the shares of the stock of the Second National Bank, is it not? A. Yes, sir.

Q. That book runs from what date to what date? A. From 1864.

Q. To when? A. Well, I suppose, up to the time when the Bank went out of existence.

Q. To 1906?

THE VICE CHANCELLOR: Here is one entry dated 1907.

MR. LANE: It runs to the end of the Second National Bank.

THE VICE CHANCELLOR: He says as long as the bank was in existence, Mr. Vredenburgh.

Q. Now, during that whole time Denton only had, in his name, 100 shares of the certificates of the Second National Bank? A. At one time.

BY THE VICE CHANCELLOR:

Q. All told, did Denton ever have in his name, actually issued by the Bank, certificates for more than one hundred shares, so far as this book and your testimony disclose? A. Well, that one certificate that was split up and put into two, that was in his possession at the time—

Q. No, read the question (Question repeated) By that question I mean at any period of time from the beginning of the Bank to its extinction, did Mr. Denton ever have in his name more than one hundred shares of the stock of the Bank? A. No, he did not.

BY MR. VREDENBURGH:

Q. I show you a letter, which seems to be in your handwriting, and I will ask you whether it is in your handwriting or not? A. The body of it; yes, sir; everything except the signature, which is "James G. Hasking, Cash'r."

Q. And the signature is that of James G. Hasking, is it not? A. Yes, sir.

The letter is offered in evidence by Mr. Vredenburgh admitted in evidence, without objection, and is marked J. B. V-9. It is on the letter-head of the Second National Bank of Jersey City, and reads as follows:

"Jersey City, N. J., Nov. 16th, 1901.

C. H. Herrick,Esq.,

Dear sir:

On the 12th day of August, 1901, William Hogencamp transferred to Henry M. Denton 50 shares of the stock of this Bank then standing in his name and certificate No. A-348 for fifty shares was issued to Mr. Denton.

Mr. Denton was not a stockholder previous to that transaction.

Jas. G. Hasking, Cash'r."

Q. Do you know, Mr. Hogencamp, why that letter was written by you? A. I do not.

Q. Mr. Hogencamp, the two $12,000 notes dated April 23rd, 1900 I understood you to say, remained in your possession from the time they were delivered to you up to the present time is that so? A. I was mistaken.

Q. What? A. I was mistaken.

Q. Well, correct your mistake. A. By reference to the books of the Bank, they were never out of the Bank.

Q. What were they put in the Bank for? A. They were given to me for the stock—

BY THE VICE CHANCELLOR:

Q. Repeat the question (Question read) He did not ask you how you got it, or why they were given to you, he asked you what they were put in the Bank for? A. Well, I am a little mixed up on

the "twelve thousands," I don't know which is which, nor what is what, I am testifying to.

Q. He asked you this question: He asked you whether you had not heretofore testified to the following facts, that on the 23rd day of April, 1900, Henry M. Denton made two promissory notes to you, each for the sum of $12,000 at three months and each endorsed by Denton; and whether you have not testified that those two notes were delivered to you at that time by Denton, and have since been in your possession up to this present moment? A. No, sir; if I did testify that way, I was mistaken.

Q. Then he said to you "correct your mistake," which means to tell what you now desire to tell as the facts concerning the custody, possession and ownership of those two notes given by Denton to you on the 23rd day of April, 1900? A. They were subsequently exchanged for notes of Mr. Shaw.

Q. He did not ask you that, he asked you who has had the physical possession of the two pieces of paper upon each of which was written a promissory note by Henry M. Denton to you,, each for $12,000, each at three months, and each endorsed by Denton-physical possession, now, who has had the pieces of paper in their hands? A. The Second National Bank.

By Mr. Vredenburgh:

Q. Now, I ask you what were they in the Second National Bank for? A. For moneys edvanced by them.

By the Vice Chancellor:

Q. Do you mean discounted? A. Discounted, or charged into the Loan Account, I don't remember now what they were.

Q. Well, moneys on those identical notes, do you mean? A. Yes, sir; that is my recollection of it now.

BY MR. VREDENBURGH:

Q. I call your attention again to this letter of November 16th, 1901, marked J. B. V-9, and ask you whether the 50 shares therein referred to were fifty of the one hundred shares which you said were handed to Mr. Denton on April 23rd, 1900 at the date of these notes? A. I do not recollect the transaction at all, Mr. Vredenburgh.

BY THE VICE CHANCELLOR:

Q. Repeat the question (Question repeated) Now, you cannot possibly say, I should think, that you do not remember the transaction in April because the last time you were on the stand, three or four days ago, in answer to questions from me, you actually described the scene that took place; you said you remembered handing the stock into Denton's hand, and you remembered his handing it back to you; now, Mr. Vredenburgh wants to know whether the fifty shares that you referred to when you wrote J. B. V-9, was fifty of the shares that you, three or four days ago, described as remembering having handed over to Denton, and Mr. Denton's having handed back to you or are they some other fifty shares?

THE WITNESS: May I see the Transfer Book?

THE VICE CHANCELLOR: He wants to see the Transfer Book, Mr. Lane.

(Mr. Lane hands the Transfer Book to the witness).

Q. (Question repeated.) A. Yes, sir; I think it was.

Q. (By Mr. Vredenburgh.) The certificate mentioned in that letter, A-348, you find in the Certificate Book, do you not? A. Yes, sir.

THE VICE CHANCELLOR: It is J. B. V-7, in evidence.

Q. You do, don't you?

THE VICE CHANCELLOR: The Court answers that, because the Court has personal knowledge of it; it is J. B. V-7, in evidence.

BY THE VICE CHANCELLOR:

Q. Does the Transfer Book that you just looked at contain any record of the transfer of 100 shares of stock by you to Denton? A. Yes, sir.

Q. Read, please, whatever entry is on the Transfer Book? A. "For value received I hereby assign and transfer to Henry M. Denton of Avon, N. J., one hundred shares of the Capital Stock of the Second National Bank of Jersey City. Jersey City, August 12th, 1901.

(Signed) W. Hogencamp.

Shares, 100."

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

BY MR. VREDENBURGH:

Q. And that was the 100 shares about which you have been testifying as having been sold by you to Denton? A. Yes, sir.

MR. VREDENBURGH: I offer that transfer in evidence.

(The transfer is admitted, without objection, and is marked J. B. V-10).

Q. Do you recollect, Mr. Hogencamp, of writing any other letter on that same day with reference

to this 50 shares of stock? A. I do not; no, sir; unless you have got it there.

THE VICE CHANCELLOR: No, he just asked you whether you received it?

THE WITNESS: I do not.

Q. I show you a letter dated November 16, 1901, and ask you whether that is in your handwriting? A. Yes, sir.

Q. Is it signed by you? A. Yes, sir.

MR. VREDENBURGH: I offer that letter in evidence, and ask that it be written in the record.

The letter is admitted without objection, and is marked J. B. V-11. It is upon the letter-head of the Second National Bank of New Jersey, and, after the printed matter, reads as follows:

"Jersey City, N. J., Nov. 16th, 1901.

J. J. McKelvey, Esq.,

Dear sir:

On the 12th of August, 1901, I loaned Henry M. Denton fifty shares Second National Bank Stock to enable him to borrow $6,000 on it at the Chase National Bank. He has been disappointed in his money matters and I am obliged to take up the loan to redeem the stock. Please let me know the amount due and I will send check. Denton never owned the stock, it was my property and I transferred it to him on that date for the the purpose mentioned and simply as an accommodation.

Yours truly,

W. Hogencamp."

Q. Mr. Hogencamp, the letter marked J. B.

V-9 and the letter marked J. B. V-11 went to the same person, did they not? A. I think not.

Q. Who was C. H. Herrick, Esq.? A. I don't recollect now.

Q. Was he not manager of the Batavia & New York Wood Working Company? A. I have no recollection on the subject.

Q. I show you a check on the Chase National Bank, dated August 16th, 1901, No. 6700, to the order of the Batavia & New York Wood Working Company, for $2019.67, and call your attention to the endorsement on that check, to refresh your memory as to who Mr. Herrick was, and ask you whether having refreshed your memory from that check, you can tell us who he was? A. No, sir; I do not recollect the name.

THE VICE CHANCELLOR: One minute: The name to which you call his attention, Mr. Vredenburgh, on the back of the check, is "Honeck," and the name on the paper that we have been talking about, J. B. V-9, is either "Hennick" or "Herrick." It may be that he don't know the names, or anything of that sort, but the names are not the same. The witness is asked his recollection, and his recollection is that he don't remember who he was. Now, I am going to ask a question, Mr. Vredenburgh, and if there is any reason, so far as you are concerned, why I should not, I will not press it. It is to clear a matter up in my mind. If it is thought to be improper by either counsel that I should not ask it, I shall not press it.

BY THE VICE CHANCELLOR:

Q. I notice in J. B. V-11, Mr. Hogencamp,

which is the letter dated November 16, 1901, written and signed by you, to J. J. McKelvey, that you say to him "Please let me know the amount due,"—what did that mean?

There being no objection to the question by either counsel, the witness answers.

A. The amount due to him as attorney; that is my recollection.

Q. This letter which you wrote to Mr. McKelvey in its first part, conveys information to him that you loaned to Denton 60 shares of your Second National Bank stock to enable Mr. Denton to borrow $6,000 at the Chase National Bank. That is true, is it not? A. Yes, sir.

Q. And then you go on and tell Mr. McKelvey that you are obliged to take up this loan so as to get your stock back. Is not that correct? A. Yes.

Q. And then you say "Please let me know the amount due, and I will send check," now, what did Mr. McKelvey have to do with money which Mr. Denton had borrowed on his own note with your stock as collateral at the Chase National Bank? Why didn't you go to the Chase National Bank and ask what was due on the note? Why did you ask Mr. McKelvey? A. I don't recollect; I can't recollect now.

Q. Oh, can't you give us any idea about it? How on earth can anybody else tell you how much it is going to cost you to redeem stock that is deposited as collateral in a bank except that bank? A. How Mr. McKelvey arranged it—whether Mr. Denton arranged it, or Mr. McKelvey arranged it now at the Chase Bank, I don't know.

Q. Well, how could it make any difference who

arranged it? Is not the way to find out how much you owe a bank to go to that bank? Why did you go to some outsider and say "Let me know what it will cost me to redeem my stock from a bank where my stock is up as collateral?" Why didn't you go right to the bank? A. I don't know now, sir.

Q. Well, I don't understand what on earth Mr. McKelvey had to do with money which Mr. Denton had borrowed at the Chase National Bank, putting up your stock as collateral for his note? A. I don't know, as a matter of fact, who borrowed the money there, your Honor.

Q. Well, of course we do not know except by your letter, in which you said that Denton borrowed money on it at the Chase National Bank. A. Well, my recollection is that the money was borrowed at the Chase Bank, but whether it was borrowed or whether it was borrowed on Denton's name or whether it was loaned to McKelvey, I do not know now.

Q. We only know what you say—you said he borrowed it—now, listen to this language—"on the 12th day of August, 1901, I loaned Henry M. Denton fifty shares Second National Bank stock to enable him to borrow,"—that is not somebody else, that is him; now, I am asking you to explain it, and you say your recollection does not bear you out and you cannot tell us why on earth you wrote to Mr. McKelvey about a loan that Mr. Denton made at the Chase Bank instead of applying to the Bank. A. Mr. Vredenburgh, show me the check of McKelvey—

MR. LANE: That has got nothing to do with this.

THE VICE CHANCELLOR: What is it you want to ask, Mr. Hogencamp?

THE WITNESS: I don't know whether that had anything to do with this transaction, or not; there is a similarity of dates.

THE VICE CHANCELLOR: The witness suggests that you show him a check of Mr. Mr. McKelvey, and he does not know, whether if he sees that check, it can refresh his recollection about this, or not.

BY MR. VREDENBURGH:

Q. I show you the check to which you refer, and ask you whether that does refresh your memory? Is that the check? A. This purports to be a check to J. J. McKelvey for $2019.67, "Pay to the order of Batavia & New York Wood Working Co."

BY THE VICE CHANCELLOR:

Q. Now, he wants to know whether that is the check to which you refer, which you said might refresh your recollection? It is dated August, 16, 1901, on the Chase National Bank. Is that the one you had in mind? A. If that is the only check, it does not refresh it.

Q. That was the check you spoke of, though? A. Yes.

Q. And upon looking at it you do not find that it brings any matter to your memory, is that it? A. Yes, sir.

BY MR. VREDENBURGH:

Q. What date did Mr. Denton borrow from the Commercial Trust Company $6,000? A. I think that is on the record already.

THE VICE CHANCELLOR: If Mr. Vredenburgh has no objection I will refer to my own minutes and find out when that was

and put it on the record here? Have you any objection, Mr. Vredenburgh?

MR. VREDENBURGH: No objection at all.

THE VICE CHANCELLOR: I find that Exhibit 21 is a check of the Commercial Trust Company, on the Third National Bank, to Henry M. Denton, for $6,000, and is dated August 23, 1901; and Exhibit 13 is a check from Denton to the Commercial Trust Company for $6067, dated May 1st, 1902, which is the date when that loan was taken up at the Commercial Trust Company.

Q. Did Mr. Denton return to you any part of the $6,000 loan at the Chase National Bank? A. I do not recollect.

MR. VREDENBURGH: I offer the check at which the witness looked, dated New York, August 16th, 1901, No. 6700, on the Chase National Bank, "Pay to the order of Batavia & New York Wood Working Company, Two thousand and nineteen dollars and sixty seven cents." signed "J. J. McKelvey," and endorsed "Pay to the order of the Bank of Genesee, The Batavia & N. Y. Wood Wkg. Co., Chas H. Honneck, V. P., and under that the bank endorsement of the Genessee Bank.

MR. LANE: I object to it as immaterial. I object to it at this time unless there is offered with it a check which was exhibited to the witness Hogencamp last Thursday, for $3783.33, in connection with the same transaction, and identified by the witness Hogencamp at that time in connection with this transaction. If both are offered together, I have no objection.

THE VICE CHANCELLOR: Are you going to offer them both together, Mr. Vredenburgh?

MR. VREDENBURGH: I will comply with that; and I now produce a check dated New York August 15, 1901, No. 6698, on the Chase National Bank, through New York Clearing Association, "Pay to the order of Henry M. Denton Three thousand seven hundred and eighty three dollars and thirty three cents," signed "J. J. McKelvey," and endorsed "Henry M. Denton," and the bank stamp of the Second National Bank, showing that it was paid on the 16th of August, 1901, through the Clearing House. I offer both of those checks in evidence.

THE VICE CHANCELLOR: Mr. Lane has already stated that he has no objection, so both will be now admitted, the check to the Batavia & New York Wood Working Company being marked J. B. V-12, and the one to Henry M. Denton being marked J. B. V-13, September 20, 1910.

The witness asked leave to look at the two checks just offered, and they are handed to him for his inspection.

BY MR. VREDENBURGH:

Q. Refreshing your memory from these two checks, J. B. V-12, and J. B. V-13, can you testify what those two checks are about? A. One was J. J. McKelvey's check to the Batavia Wood Working Company—

BY THE VICE CHANCELLOR:

Q. We know that as much as you do; what he wants to know is, after looking at those checks,

can you recall what the transaction was? A. I remember part of the transaction.

Q. Now, tell us. A. I remember about the J. J. McKelvey, J. B. V-12, check for $3783.33 made by McKelvey to Denton.

Q. What do you remember about that? A. It was given to me.

Q. By whom? A. By Henry M. Denton, I imagine.

Q. All right. A. And deposited in my account in the Second National Bank of Jersey City.

Q. Is that all you remember? A. Well, as far as that goes, yes.

THE VICE CHANCELLOR: He traces it now into his account; now, do you want him to trace it out, or is that the end of it?

MR. VREDENBURGH: I want him to tell what he remembers of the transaction.

THE VICE CHANCELLOR: Well, he says, as far as that check is concerned, it went into his bank account in the Second National Bank. Now, the only other question is he may have some memory as to what he did with that money, if you want to ask him; or you may not, I don't know.

BY MR. VREDENBURGH:

Q. Have you any memory as to what you did with it? A. Yes, sir; credited it to my account and paid it out on sundry vouchers to Mr. Denton's benefit.

BY THE VICE CHANCELLOR:

Q. Did not you identify all those the other day? A. Yes, sir.

Q. And put the checks in evidence, didn't you? A. Yes, sir.

By Mr. Vredenburgh:

Q. That is one of the items in that account—the first item, is it not? A. The first item; yes, sir.

Q. Now, what I want to know is whether that was not the proceeds of the loan of the $6,000 at the Chase National Bank in New York? A. You will have to ask Mr. McKelvey about that; it was his check.

Q. You do not remember? A. It is only imagination.

Q. You have the two checks that I have offered in evidence, J. B. V-12 and J. B. V-13? A. Yes, sir.

Q. Aren't they the same transaction? A. They aggregate $5,803.

Q. Well, aren't they the same transaction? A. I imagine they are.

Q. And are not these two letters that you wrote in November 16th J. B. V-9 and J. B. V-11, which are now in front of you, letters in the same transaction? A. They are part of this McKelvey transaction, undoubtedly. That other one there—

Q. (Interrupting) Which "other one" are you talking about? A. The Honeck, or whatever it is—there is nothing about that that I remember about now; this letter here, J. B. V-11, when I see that and see these two checks, I am sure that they are the same transaction. My memory does not hold anything about Honeck, or Herrick.

Q. I show you another paper, being an agreement dated the.....day of June, 1901, between Wm. Hogencamp and Francis H. Robinson and Angeline W. Robinson, and I ask you whether that is your signature to that contract? A. Yes, sir.

Q. Was it executed about the time it bears date?

THE VICE CHANCELLOR: It does not bear any date, is the trouble.

BY THE VICE CHANCELLOR:

Q. Well, was it executed about June, 1901? A. I think it was.

Q. Is there not a Notary's certificate there, dated the 25th day of June, 1901? A. The 25th day of June, 1901.

BY MR. VREDENBURGH:

Q. Read it over. I want to ask you about the mortgage that is mentioned in it? A. (The witness complied).

Q. I observe in this paper this language: "Whereas the parties of the second part" (that is the Robinsons) "have agreed to purchase the building known as the Beard Building and to assume the mortgage owned by the party of the first part" (that is yourself) "and which mortgage is to secure the sum of fourteen thousand dollars on demand," whose mortgage was that, yours, or did you hold it as trustee for somebody? A. I held it as trustee.

Q. Trustee for whom? A. Denton.

Q. Henry M. Denton? A. Yes, sir.

Q. And was the bank interested in that at all? A. I do not recollect now. They had it there, I suppose as a general collateral.

Q. Who do you mean by "they had it"? A. The bank, the Second National Bank.

Q. The bank had it? A. Yes, sir.

Q. And had it as a collateral, you think? A. I think so.

Q. Collateral for what? A. Moneys advanced, or to be advanced, or that had been advanced to Denton.

Q. When did the Bank get it? A. I don't know.

Q. When did it deliver it up? A. I don't remember.

Q. To whom did it go—to whom did it deliver it—to whom did the bank deliver this mortgage after it got through holding it as collateral? A. I don't know now.

BY THE VICE CHANCELLOR:

Q. Well, do you remember that they ever did hold it as collateral, or are you just guessing? A. I know that that mortgage was up in the Bank.

Q. Does your memory positively bear recollection that this fourteen thousand dollar mortgage mentioned in this paper, which mortgage was on the Beard Building, was deposited in the Second National Bank as collateral for loans either then made or to be made to Denton? A. I am morally certain of that; yes, sir.

MR. LANE: The books will show.

THE VICE CHANCELLOR: He has not said that. I am asking his recollection. If he can tell us from something else, why I suppose that Mr. Vredenburgh is willing that he should do so.

MR. VREDENBURGH: I am perfectly willing.

Q. Will the books show it? A. I don't know, without consulting them.

MR. LANE: Do you want him to consult them?

MR. VREDENBURGH: I want him to show that, if he can.

Q. Please consult the books and let us know. A. (The witness calls attention to an item on page 6 of the General Ledger No. 7, Second National Bank, second column, reading as follows:

"Bonds and Mortgages. Beard Bldg. Liberty & Cedar Sts. N. Y., 1901. Mch. 21, 14,000—1901. Aug. 5, 14,000")

BY THE VICE CHANCELLOR:

Q. Now, Mr Hogencamp, with respect to that item, what does it mean by having one item of $14,000 on one side of the red line, and another item of $14,000 on the other side of the said line? A. When the Bank took the mortgage it was charged into Bonds and Mortgages Account on the left hand side; and when it was taken away from them they gave them credit on the other side.

THE VICE CHANCELLOR: Now, Mr. Vredenburgh, do I understand that you desire to offer in evidence this agreement that the witness identified?

MR. VREDENBURGH: Yes, sir.

(The agreement is admitted without objection and is marked J. B. V-14.)

BY MR. VREDENBURGH:

Q. Mr. Hogencamp you having that book in front of you, will you tell us all the properties in New York in which Denton was interested in which you or the Bank was interested, at the date of that mortgage?

THE VICE CHANCELLOR: The date of which mortgage?

MR. VREDENBURGH: At the date of the mortgage to which we have just referred.

THE VICE CHANCELLOR: Do you mean the date of the agreement, or the date of the mortgage?

MR. VREDENBURGH: I mean the date of the mortgage.

THE VICE CHANCELLOR: Well, there is nothing to show the date of the mortgage, that I know of.

Q. At the date of this agreement, which is June 25, 1901? A. December 26, 1901, there is a debit to Bonds & Mortgages of $24,000.

Q. And that was paid off when? A. March 21, 1901.

Q. Go on. A. January 14, 1901, Bond and Mortgage on property 124th St. & Lexington Avenue, New York, $12,500.

BY THE VICE CHANCELLOR:

Q. That is the time the bank got it? A. Yes, sir.

Q. And gave it up when? A. February 13, 1903.

Q. Do those figures and items that you have been referring to indicate that that mortgage was taken out of the Bank at that time, or that they got that much cash at that time—can you tell which? A. That means when it was taken out of the Bank.

Q. It does not mean that it was paid off, or that the Bank got the money on it? A. It means it was taken away.

Q. It means the physical bond and mortgage were taken away? A. Yes, sir. The entry is closed.

Q. Go on, what other properties were there in which Denton was interested? A. Bond and Mortgage West 48th Street, New York.

Q. When did the bank get it? A. August 5, 1901, $25,000.

Q. When did the bank give it up? A. February 13, 1903. I do not see anything else there.

Q. Well, do you find any others? A. No, sir.

THE VICE CHANCELLOR: You only asked him up to a certain date, Mr. Vredenburgh.

MR. VREDENBURGH: Yes, I said up to the date in June,—June 25, 1901.

THE VICE CHANCELLOR: Now I understand the witness to say that he does not find any other items in this book of any properties of Denton's except those he has mentioned, up to June 25, 1901. Now, proceed.

Q. Do you find any reference there to a mortgage for $69,528.78, assigned to you on February 26th, 1903, by Sarah Horton, for property in New York on 149th Street? A. No, sir; I do not.

Q. Mr. Hogencamp, who was Thomas O'Callaghan, Jr.? A. A lawyer over in New York.

Q. A lawyer for you, or for Denton, or for whom? A. For Mr. Denton.

Q. I show you a check, N. A-2849, of Thomas O'Callaghan, Jr., dated New York, the 17th day of July, 1901, on the Colonial Bank, N. Y., to the order of William Hogencamp, for $250. signed "Thos. O'Callaghan, Jr.," and endorsed with the signature "W. Hogencamp,"—is that your signature? A. Yes, sir.

Q. What was that for? A. I do not recollect now.

Q. You got it? A. I certainly got it.

MR. VREDENBURGH: I offer it in evidence.

MR. LANE: I object to it as immaterial.

THE VICE CHANCELLOR: I overrule that objection.

MR. LANE: And as incompetent and irrelevant also. They might produce any number of checks from any number of different persons, and trace them into Hogencamp's account—how has that got anything to do with this controversy? And because Mr. O'Callaghan happened to be attorney for Denton, how does that show that the moneys were received by Mr. Hogencamp for Denton's account? I do not imagine that Mr. O'Callaghan had but the one client then.

THE VICE CHANCELLOR: He has got a perfect right, however, to introduce into evidence, as against Mr. Hogencamp (who has claimed some interest in this loan and collateral) proof of moneys of Denton's for the purpose of showing that Hogencamp was paid whatever Denton owed him.

MR. LANE: Unquestionably, if he proves that they were moneys of Denton; but he has not proved that this $250 had anything to do with Denton.

MR. VREDENBURGH: Suppose I state my view: I offer it in this view,—Mr. Hogencamp presents an account which he says is his account with Mr. Denton, and at the same time I show checks to him from Denton's attorney, which I shall show were Denton's money, I suppose.

THE VICE CHANCELLOR: You mean that

you intend to show, if you can, that this was Denton's money?

MR. VREDENBURGH: Denton's money; and they do not give an account of it in this book.

MR. LANE: Then when he shows that, the check, it may be, will be admissible; but I cannot see how, at the present stage of the proofs, the check is admissable in this controversy.

THE VICE CHANCELLOR: I will now mark the check "J. B. V-15 for identification," and if subsequently it is shown to be relevant, I will admit it; so it is now marked J. B. V-15, not yet admitted.

Q. I show you another check from the same person, on the same Bank, to your order, dated the 6th of August, 1901, for $2500, also endorsed "Wm. Hogencamp," and ask you whether that endorsement is your signature? A. It is; yes, sir.

(The check is marked for identification J. B. V-16).

Q. Was that Denton's money that came to you? A. I don't know.

Q. Eh? A. I don't know.

Q. You do not know whom that $2,500 belonged to, that you got? A. I do not.

BY THE VICE CHANCELLOR:

Q. And does that same answer apply to the $250, represented by the previous check shown to you, marked for identification, J. B. V-15? A. I have no recollection of it now, that is, no remembrance of the transaction.

BY MR. VREDENBURGH:

Q. You have found, I understand, the book in which you say some account was kept, which was lost or was not to be found at the last hearing a few days ago? A. Yes, sir.

Q. You have it here now? A. Yes, sir.

Q. Can I see it? A. I have no objection.

MR. LANE: Well, I object to that, if your Honor please, unless, if it is called for, it goes in evidence.

THE VICE CHANCELLOR: Undoubtedly; if you look at it, Mr. Vredenburgh, it becomes evidence and immediately goes into evidence. That is the rule of evidence, that you cannot call on your adversary for a paper and see whether you want it, or not, and then not have it go in evidence.

MR. VREDENBURGH: I do not call for it at all, may it please your Honor.

THE VICE CHANCELLOR: Then that ends it.

MR. VREDENBURGH: Let me tell you why I think I have a right to it: He testifies to the contents of this book on the theory that it is lost—now he produces it.

THE VICE CHANCELLOR: But he does not produce it. He says he has it. There is a material difference between "producing" a thing and saying that you "have" it. If Mr. Lane produces it, that is another matter; but so far, the situation is this: that this witness, on Thursday last, testified that in a certain book he had kept a certain account between him and Denton, which, as I recall it, he said contained all the items of the account between those re-

spective dates; he also testified that in some affidavit, which was shown to him, he had made a correct transcription of what was in the book. You now ask him whether he has that book here. He says he has. Now, as I understand the rule of evidence, if you ask him to let you look at that book, in other words, to produce the book to you, it then becomes an instrument of proof and it goes into evidence. Whether or not what he has testified about the contents of that book shall remain on the minutes will depend upon what disposition I may make of a motion which you may make to have that stricken off the minutes because it now appears that the book is not lost. That is another matter; but if you call for it, it has got to go into evidence.

MR. VREDENBURGH: Well, I won't look at it, your Honor.

Q. Mr. Hogencamp I now call your attention to the two notes, one for $12,000 and one for $13,000 that you say were given by Shaw to you on the 27th of August, 1902: Do you remember what was endorsed on those notes? A. I do not now.

Q. Did Mr. Shaw endorse them? A. Are the notes in evidence? I can tell you if I see them. I do not recollect. I cannot keep the run of all those things in my head.

Q. (Showing witness Exhibit 13): I ask you when the endorsement "Without recourse, Wm. Hogencamp" was put on there?

MR. LANE: I object to that as immaterial to any part of this case, and irrelevant. The questions with respect to that particular note have been, up to this time, over-

ruled on the objection of Mr. Vredenburgh on the ground that we were not trying the case of Richards vs. Shaw.

Question withdrawn.

Q. Mr. Hogencamp, was the endorsement "Without recourse" endorseed on both notes at the same time?

MR. LANE: I object to that, because it appears that there was no such endorsement on the note of June 30, 1902.

THE VICE CHANCELLOR: This is cross-examination, and I overrule the objection. (To the witness) He shows you Exhibit No. 19, which is the note dated August 27, 1902, for $13,000, made by R. L. Shaw to himself, on the back of which is endorsed in your handwriting "Pay to Wm. Hogencamp or order. Without recourse, Wm. Hogencamp," and after the words "Pay to Wm. Hogencamp" is the signature "R. L. Shaw"; and he asks you whether there was a similar writing upon the back of the note for $12,000 made by Shaw to you at the same time?

A. I do not recollect.

Q. Why did you write it on that (Exhibit 19)?

MR. LANE: I object to that as immaterial and irrelevant.

THE VICE CHANCELLOR: I sustain the question; I think it is entirely relevant.

A. To relieve myself of the responsibility as an endorser.

Q. Then wouldn't you for the same reason endorse it on the $12,000 note? A. I do not recollect it, sir.

Q. Eh? A. I cannot recollect it, because it is not before me.

Q. You had access to the $12,000 note since last April, hadn't you? A. Not to my knowledge.

Q. You went over these papers in Mr. Lane's possession, did you not, and took away from him the book there that you have spoken about? A. This book?

Q. Yes. A. No, sir.

Q. You did not take away from him the book? A. Not that I know of; I say.

Q. You did not hear Mr. Lane testify that you did, eh? A. Well, I tell you I do not recollect it.

By the Vice Chancellor:

Q. Well, do you recollect that Mr. Lane just testified last Thursday that you did take it away from him? A. I think he said so; yes, sir.

By Mr. Vredenburgh:

Q. Did you hear him testify that you had gone over the papers, or words to that effect, in his office, and taken that book? A. If he said so, I certainly will back him up in it.

Q. Did you take away that $12,000 note? A. I did not.

Q. Where is it now? A. I don't know.

Q. Now, you testify that you do not remember what was on the back of that note, eh? A. The 12,000 note?

Q. Yes. A. No, I do not.

Q. You do not recollect whether Shaw endorsed it, or not? A. I recollect there was a note payable to his order, that I know; the note was payable to his order; what else was on to it I have no recollection now.

Q. When did you make the endorsement on that note "without recourse"—Exhibit 19?

MR. LANE: That is objected to as immaterial and irrelevant, and on the same grounds upon which I made the other objections.

THE VICE CHANCELLOR: I overrule that objection.

A. I do not recollect.

Q. Did you testify when you did, in the former trial? Did you testify, in the trial of Richards vs. Shaw, when you made that endorsement? A. I do not recollect.

Q. I ask you to refresh your memory from this testimony of yours, which I will read and then answer the question (reading from page 15 of the stenographer's minutes of the trial of the case referred to) "Q. Why did you make the endorsement on the note that you speak of 'Pay to the order of William Hogencamp' after Shaw had endorsed it and not before? A. It was held that way, and subsequently I took up the note from the Bank—THE VICE CHANCELLOR: Oh, no; answer the question. (Question repeated) A. The note was mine. Q. What do you mean by that? A. I had taken it up from the Bank. Q. That was after it was given? A. After it was given. Q. Before you made the endorsement? THE VICE CHANCELLOR: How could he take it up before it was given? It must have been taken up afterwards. It is a physical impossibility to take it up before. MR. HUDSPETH: I see what your Honor means. Q. When did you take it up from the Bank? A. I think it was in 1905. Q. Now, from the time the note was given, August 27th, 1902, up to the time you say you took it up, for whom was that note held? A. For the

Second National Bank. Q. And for whom was the mortgage held? A. For the Second National Bank. By the Vice Chancellor: Q. When did you write the words that appear in your handwriting on the back of this note, as follows: 'Pay to William Hogencamp or order without recourse'? A. After I had taken it up from the Bank. Q. Sometime in 1905, or after? A. Sometime in 1905, or afterwards": Now, refreshing your memory by your testimony, which I have read, can you say when you made that endorsement? A. No, I cannot now; I know it was some time ago. I have no doubt but that what you read there was correct, but I was mistaken.

Q. In what respect were you mistaken? A. In this respect, that that Shaw indebtedness was not taken up at the Second National Bank by me, it is there still; it is there to-day; and when I testified that I had taken it up I was under a misapprehension; I got it mixed up with another transaction entirely different.

Q. The question is when you made that endorsement on that note? A. I don't know.

Q. Well, I am refreshing your recollection: The Vice Chancellor then said: "That is dated the 22nd, of March, 1906. Q. 1906? A. Well, it was before that some time, I don't know when; we were in treaty for some time, and I don't know how long the time had run."

The Vice Chancellor: What was I referring to when I said "that was dated &c?" Doesn't it say?

Mr. Vredenburgh: The Assignment of the mortgage.

The Vice Chancellor: (To the witness) I had called your attention in the previous trial to the fact that the assignment of the

mortgage was dated March 22d, 1906, and I asked you how long before that it was that you wrote those words about "without recourse" on the note which that mortgage under foreclosure in that suit was security for.

MR. VREDENBURGH: One minute, I have misled your Honor; let me read the next question: "Q. Then, when, as you mean to testify, did the Bank cease to have any interest in that note?" and the answer was "Sometime in 1905."

Q. Did you so testify, Mr. Hogencamp? A. I think I did.

THE VICE CHANCELLOR: Then I was right. Now, I understand this witness to say that that was what he did testify to in the suit of Richards vs. Shaw?

THE WITNESS: I think I did.

Q. Mr. Hogencamp, I read you this from your testimony, and ask you whether you so testified in the case of Richards vs. Shaw (page 16)"Q. BY MR. VREDENBURGH: Do you mean by that last answer, Mr. Hogencamp, that you wrote that on the note after the assignment of the mortgage that has been offered in evidence in this cause?" "and your answer was No, before that—well, which assignment do you refer to? Q. I refer to the assignment from you to Mr. Harding? A. It was before that or about the same time,"—what was referred to as written on the note were the words "without recourse, William Hogencamp": Did you testify to that? A. I think I did.

Q. Did you have the $12,000 note at the same time that you had the $13,000 in your possession? A. They were both in possession of the bank.

Q. Well, at the same time? A. Yes, sir.

Q. Were they ever separated, so far as you know, until the assignment to Harding? A. No, I think not.

Q. Was there any reason why you would not endorse on the $12,000 note the same endorsement that you made on the $13,000 note? A. I could not say about the reason for it, no; I don't know anything about the reason.

BY THE VICE CHANCELLOR:

Q. That is not what he asks you, he asks was there any distinction, that you can think of, between these two notes of Shaw's which would cause you to endorse on one of them, namely on the $13,000 note, what you did endorse, and would cause you to omit to endorse that on the other one, namely the $12,000 note—can you think of any reason why you would put it on one and not put it on the other? A. I cannot now.

BY MR. VREDENBURGH:

Q. I ask you, Mr. Hogencamp, whether you testified as follows (page 349): "BY THE VICE CHANCELLOR: Q. Yes, but what I do not understand is this: On the 7th of September, 1905, you absolutely owned the Shaw $13,000 note, the Shaw $12,000 note, and the right to deal with the collaterals? A. Yes, sir. Q. Now, the Bank never again owned those notes, did it? A. No. Q. You always owned them from that time? A. I owned the notes. Q. If the bank ever had any title to them, it was when you pledged them to the Bank as collateral for some loans which you got from the Bank? A. That is right": Did you testify to that? A. I think I did.

Q. Is that true? A. I think that the trans-

action was a different transaction. I think I was mistaken in that.

Q. Mr. Hogencamp, will you please turn to the Individual Ledger in which you have your individual account for the year 1905?

MR. LANE: That book it not here.

(Mr. Vredenburgh calls for the Credit Cash book, No. 49, for the year 1905).

THE VICE CHANCELLOR: Can you go on with something else until those books get here, Mr. Vredenburgh?

MR. VREDENBURGH: Yes, sir.

THE VICE CHANCELLOR: All right; Mr. Lane has sent for them.

Q. Mr. Hogencamp, who paid you the $19,000 on September 7, 1905, for the 100 shares of stock which you sold belonging, as you say, to Denton? A. It was sold to F. W. Child & Co.

Q. What date did you sell it to them? A. I do not recollect now; it was in 1905, I do not recollect the exact date.

MR. LANE: The endorsement on the note was September 7th.

Q. I show you Exhibit 15, and the endorsement on the back of it, in order to refresh your memory as to when you sold the stock and when you got the $19,000? A. I should imagine it was about the same time.

Q. (By the Vice Chancellor) What is that, what date? A. September 7, 1905.

Q. By Mr. Vredenburgh) That you paid in cash, or how? A. Checks—some checks and some cash, and I think there were one or two acceptances.

Q. (By the Vice Chancellor) But it was cash, or cash's equivalent? A. Yes.

Q. (By Mr. Vredenburgh) Did you deposit it in the Second National Bank? A. Yes.

Q. Will you show where the deposits are?

MR. LANE: He cannot we have not got that book here yet.

MR. VREDENBURGH: Will you please show me, Mr. Lane, the checks you introduced in evidence as being part of this $6,000?

(The checks called for are produced by Mr. Lane and handed to Mr. Vredenburgh. They are Exhibit 11, A. to T. inclusive).

MR. LANE: I might, if your Honor please, if he is going to cross-examine on those checks, say that one of the checks which I had in the number of checks here to be offered in that connection was omitted yesterday from being offered. If he is going to cross-examine, he may as well have them all. There was one check that was omitted.

THE VICE CHANCELLOR: All right; have you any objection to his offering it now, Mr. Vredenburgh?

MR. VREDENBURGH: No, sir.

BY MR. LANE:

Q. I show you a check dated, August 22d, 1901, F. N. Rose, Judgment for Three thousand four hundred and forty eight dollars and twenty nine cents, signed W. Hogencamp, and ask you whether that was one of the checks that was testified to by you Thursday but not offered in evidence? A. Yes, sir; it was.

MR. LANE: I offer it in evidence.

THE VICE CHANCELLOR: I understand that this is one of the checks which should have been included in Exhibit 11, A. to T. inclusive, and if I admit this one it will now be A to U inclusive. Have you any objection to it, Mr. Vredenburgh?

MR. VREDENBURGH: None at all.

The check is admitted in evidence, marked Exhibit 11, U and reads as follows: "Jersey City, N. J., August 22nd, 1901. Second National Bank. Pay to the order of F. N. Rose Judgment, $3448.29 Three thousand four hundred and forty eight dollars and twenty nine cents. W. Hogencamp."

BY THE VICE CHANCELLOR:

Q. I notice that that check has no endorsement of any sort, Mr. Hogencamp; how did the money ever get out of the bank on it? A. It was charged to my account.

Q. I did not ask you that. (Question repeated) A. Paid out of my account.

Q. That is not an answer to my question. As a banking man, I ask you if I draw a check to the order of W. Hogencamp, and the back of the check has absolutely not a scrap of a pen or pencil on it, how can the bank justify itself in paying out money on such a check, or such a document? A. Will your Honor let me see the check?

Q. Yes, certainly; I want you to explain it (handing the witness the check). A. Well, I can explain it only in this way, that that was the way I did it.

Q. I did not ask you how you did it, I want to know how, as a banking man, you can explain to us that $3448.29 got out of the Second National Bank, and was charged against you on this

check, which is drawn by you to "F. N. Rose, Judgment," and has no endorsement of any kind sort or description,—can you explain that? A. No, except just this—that I was willing to take it that way.

Q. You were willing to take it? No one asked you what you were willing to do. How could the bank justify itself in paying a check which is drawn to a man's order, and is not endorsed by him for deposit, or collection, or to be cashed, or in any other way? Can you explain how that is possible? A. I cannot now. I don't know whether there was any other way it went through, or not; I don't know.

Q. You cannot possibly explain it can you? A. Not now, no, sir.

THE VICE CHANCELLOR: For my own satisfaction, I would like to have the witness's individual account of that year looked into for a moment, to see whether that check is charged up against his account, for I cannot understand how that money ever got out of the bank on that check which is dated August 22nd, 1901, and which contains no endorsement.

(Individual Ledger No. 17, A to L, shown witness).

Q. Now, you are shown the Individual Ledger of the Second National Bank, No. 17, A to L, which contains your account for the year 1901, and you are requested to see whether you can find any item there showing that any such check as this was ever taken out of your account? A. Yes, sir; it was taken out in there (indicating an entry in the account).

Q. Do you mean to say that a bank would lump

the items of charge against a customer? Don't they enter each check separately? A. Not on the Individual Ledger, no, sir.

Q. Where do they? A. On the check list.

Q. And only on a check list? A. They post them—it was customary, if it was three or four or five checks, the bookkeeper would foot them up and post them in bulk.

Q. So you think it is included in the item of August 23rd, 1901, $5123.17, is that what you think? A. Yes, sir.

MR. LANE: I can show later that that did go out of the account.

BY MR. VREDENBURGH:

Q. Mr. Hogencamp, was not that judgment assigned to you, the Rose judgment? A. I do not recollect it now, sir.

Q. And weren't you paid it back on January 30th, 1902?

THE VICE CHANCELLOR: Paid back by whom?

MR. VREDENBURGH: The property was sold under the judgment, and the Sheriff paid him that back.

Q. Paid by the Sheriff, or other official who sold the property under that judgment? A. I do not recollect the transaction.

Q. Just look at January 30th, 1902, and see what you find there; look at your individual ledger account for the year 1902 under the date of January 30th, and see whether you did not make a deposit upon that, or the next day, of some sum of money that may refresh your recollection? A. No, sir.

By Mr. Lane:

Q. Suppose you look in the Hogencamp, Trustee account, page 688. A. (Upon inspecting the page and account referred to) Yes, I find, under date of January 30, 1902, in the account "William Hogencamp, Trustee," page 688 of Individual Ledger A to L, No. 17, two items as follows,—they are on the side of the amounts deposited to the credit of that account: "$3539.54" and "$7584.79.

By Mr. Vredenburgh:

Q. And what was the $3539.54,—what was that item in payment of? A. I do not remember now.

Q. Had that anything to do with the Rose judgment? A. I could not tell you, sir.

Q. There is a check here to the order of Thomas O'Callaghan, Jr., September 27, 1901, for $53.88; I show you this Exhibit L, letter N. and ask you what that was given to Mr. O'Callaghan for? A. Money owed me (?) by Mr. Denton in settlement of something.

Q. Was that for the stamps on the Lakewood mortgage? A. I don't know anything about that, sir.

Q. Was not that for drawing the Lakewood mortgage? A. I do not recollect anything about that, sir. I do not recollect what it was for, except that it was a check, and that it purports to be given to Mr. O'Callaghan.

By the Vice Chancellor:

Q. Oh, we all know that; do not tell us that; he asks you do you remember what it was for? Why did you charge Mr. Denton with it? Have you no recollection why you charged Mr. Denton with a check you gave Thomas O'Callaghan for $53.88? A. Yes, sir; I have this recollection, that

all my transactions with Mr. O'Callaghan was for Mr. Denton's benefit.

Q. But you do not remember what this thing particularly was, is that your answer? A. Yes, sir.

Recess until 2 o'clock P. M.

Afternoon Session.

Hearing of the cause resumed at 2 O'clock P. M.

WILLIAM HOGENCAMP, recalled.

THE VICE CHANCELLOR: The witness has stated to the Court that he desires to make an explanation concerning a previous question about the check for $53.88.

(To the witness) Now, you may make whatever explanation you please with respect to that.

THE WITNESS: It was given for recording. My memorandum shows it was given for recording.

BY THE VICE CHANCELLOR:

Q. During the recess you have consulted some memorandum, have you? A. Yes, sir.

Q. And have you now found out that the check was given to Mr. O'Callaghan, for some recording is that correct? A. Yes, sir.

BY MR. VREDENBURGH:

Q. Do you remember what recording? A. I do not.

Q. The book has been produced here, the Ledger, for the year 1905, in which your account appears; won't you please turn to that ledger on page 794 and see the item $38802.95? A. I see the item.

Q. Well, read it. A. "$38,802.95."

BY THE VICE CHANCELLOR:

Q. Under what date? A. Under date of September 7, 1905.

Q. And what does that item, under that date at that place, indicate? A. It indicates a charge to my account of that amount.

Q. Taken out that day? A. Yes, sir.

BY MR. VREDENBURGH:

Q. Now, on that day how much had you in the bank? A. Before the transaction, or afterwards?

Q. Before you gave the thirty-eight thousand dollar check, was it a check? A. I think it was; yes, sir.

Q. For $38,802.95? A. That is the charge; I do not know whether that was all one item, or not, I cannot tell from here, without further examination.

Q. Make whatever further examination you desire to make. A. I imagine it was. There was fifty-one thousand before that, fifty-one thousand and $20,071.

Q. You had seventy-one thousand dollars when you gave the check for $38,802.95? A. Yes.

Q. It was good when you gave it then? A. Yes.

Q. You had received on that day I see, $25,000

on January 7th; was that the proceeds of the sale of your stock? A. No, sir.

Q. You said you sold your stock on that day?

THE VICE CHANCELLOR: No, he has not said on that day.

Q. Well, gave the credit on that day? A. Well, there is a credit of $101,200.

BY THE VICE CHANCELLOR:

Q. At the same time that you sold the stock which you say belonged to Denton did you sell other Second National Bank stock? A. Yes, sir.

Q. And did you sell it all on the same day? A. Yes, sir.

Q. And did the deposit contain all the money you received on that day? A. Well, it was sold on the same day, but I do not think I got it except on the 6th, 7th, 8th, and 9th.

Q. And you think it all came in those days? A. On those days.

Q. And this Individual Ledger, page 794, where your account for that date appears, shows deposits as follows: September 6, $101,200; September 7, $25,000; September 8th, $20,280; September 9th, $13,520: Now, do I understand you to say that all four of those items were items of money received by you for the sale of stock of the Second National Bank? A. Yes, sir; I think they were; but there was other additional items.

Q. Oh, there were more items than that, were there? A. Yes, sir.

Q. Money received later, or before? A. At that time. If I recollect it now, they were checks on the Knickerbocker Trust Company, and some of them used direct in New York and that never came over to Jersey City to my account, to take up loans over there.

Q. Then you received more money for stock than is represented in these four items that I have just read you out of this book? A. Yes, sir.

BY MR. VREDENBURGH:

Q. Now, turn to the General Ledger, page 129 Mr. Hogencamp. A. I have done so.

Q. What appears there as to Sundry Accounts?

THE VICE CHANCELLOR: Sundry Accounts? Nothing.

Q. I mean as to Suspended Debt Account, what appears there with reference to these notes of Shaw, in the Suspended Debt Account? A. An item "1904, Dec. 22nd" I think it is "R. L. Shaw, $25,375."

Q. Now turn, if you will, to the General Credit book No. 49, which I think is in front of you there, and to the date of September 7th, 1905? A. I have done so.

Q. Read what you find there with reference to a thirty-eight thousand dollar payment to the bank. A. "Sundry Items—

Q. Read the whole. A. "Suspended Debt. Sundry Items paid, $38,802.95."

Q. Was the payment of your check to the bank of $38,802.95 the payment which is represented by this last entry of September 7th, 1905, in the Credit Book No. 49? A. Yes, sir. I would like to have that other ledger here, because this is a different date than is covered in this ledger.

THE VICE CHANCELLOR: What is a different date?

THE WITNESS: This is September 7, 1905, and the date in this ledger is 1904.

THE VICE CHANCELLOR: The date in what ledger?

THE WITNESS: The general ledger.

MR. LANE: He means that the Suspended Debt Account stops in the General Ledger before the credits.

THE WITNESS: It stops at December 24, 1904, and is carried over to another ledger. Now, this is a transaction of September, 1905, which is not covered in here.

THE VICE CHANCELLOR: Oh, well, Mr. Lane will have to ask you about that, if he wants to.

MR. LANE: I do not suppose it is necessary. He wanted to make some explanation, I don't know why.

THE VICE CHANCELLOR: No, he simply said he wanted to look at it, and he has not been asked anything about it. If he wants to look at it, he will have to look at it off the stand; he has no right to bring it in as part of his evidence now, because he was not asked anything about it.

BY MR. VREDENBURGH:

Q. From what account was that item, that you have just referred to, of Shaw, $25,375, taken to be put into the Suspended Account?

THE VICE CHANCELLOR: He means whereabouts was that item, or those items, before they were transferred and put into the Suspended Debt Account?

MR. LANE: I object to that as mere repetition; we have gone all over that and traced it out.

THE VICE CHANCELLOR: Yes, Mr. Vredenburgh, unless you have some purpose in that. This witness has already testified to it.

MR. VREDENBURGH: I have no purpose; I could not recollect how far we had traced it up.

THE VICE CHANCELLOR: I will tell you: This witness has shown, on the books of the bank, when the money was advanced on those two original notes, and then he has testified that that was carried in the Call Loan Account down to a certain date where a credit appears in favor of Shaw for that $25,000 of notes; and then he testified that that credit was not a payment by Shaw, but was a transfer out of the Call Loan Account, so that it became a credit of that amount to this Suspended Debt Account which we have just had before us on General Ledger No. 7, on December 22nd, 1904. Then you have had him prove that on the 7th of September, 1905, he paid to the account of this Suspended Debt Account a sum of over thirty-eight thousand dollars; and what he calls your attention to is that that credit would not appear in this Ledger No. 7, because this Ledger No. 7 stops on the 24th day of December, 1904, and as that payment was not made until September 7th, 1905, the witness has been calling your attention to the fact that it did not appear on this ledger.

Q. Under what date would the Suspended Account appear again on the ledger of the bank? A. In the next ledger.

BY THE VICE CHANCELLOR:

Q. In the next ledger after No. 7? A. Yes, sir.

Q. Namely, No. 8? A. Yes.

BY MR. VREDENBURGH:

Q. Will you show it in that ledger? Please take

the General Ledger No. 8 and turn to the Suspended Debt Account therein?

(General Ledger No. 8 handed the witness.)

A. I have done so. I find it on page 68 of General Ledger No. 8.

Q. Does this note of Shaw appear there? A. It was a balance carried over from the other ledger.

THE VICE CHANCELLOR: The witness now testifies, as he did when this same book was shown him last week, that on this ledger, No. 8, the first item on the charge side of the Suspended Debt Account, page 68, is as follows: "1905. Jan. 3. Bal. $142,003.33" and he testifies, am I not correct, Mr. Hogenkamp, that that was the total amount of all of the charge items in the Suspended Debt Account as it appeared in General Ledger No. 7, the precedent ledger, less whatever credits were in that ledger to your account?

THE WITNESS: Yes, sir.

THE VICE CHANCELLOR: And your testimony is that the Shaw note, therefore, does not appear here individually, but, according to you, is summed up in that first item of balance?

THE WITNESS: Yes, sir.

Q. That ledger which you are now looking at extends to what date? A. On the charge side, to May 29, 1905, and on the credit side to March 24, 1906.

BY THE VICE CHANCELLOR:

Q. For my edification, point out whereabouts, in that Suspended Debt Account, this credit of $38,802.95 appears? A. Under the head of "September 7, 1905. Sundry items, $38,802.95."

By Mr. Vredenburgh:

Q. Where is the ledger in which this Suspended Account is continued? Have you the ledger showing the continuation of that Suspended Account after the date of this ledger?

The Vice Chancellor: May I interpose here?

Mr. Vredenburgh: Yes.

The Vice Chancellor: Well, it does not appear from any testimony that that account was not completely balanced and disposed of in this ledger, so that there would not be any continuation of it. You have not found out that yet.

Q. Was the suspended account disposed of in this ledger? A. Yes, sir.

Q. It was paid off in full? A. Yes, sir; it was not paid off, it was credited in full.

Mr. Vredenburgh: I now offer in evidence the Suspended Debt Account of the Second National Bank, as contained in General Ledger No. 8, page 68.

The Vice Chancellor: Have you any objection, Mr. Lane?

Mr. Lane: No, I do not suppose I have.

The Vice Chancellor: It is admitted, and it need not be marked because all of these books are readily identifiable and cannot have anything substituted for them. I am going to indicate on the minutes this account, which is short, and may be very important: On the left hand side the charges appear; on the right hand side are the credits:

SUSPENDED DEBT A/C.

1905.	Jan. 3, Bal.	142,003.33
	Jan. 11, P & L	6,000.00
	Jan. 30, 149th St., B & M	12,230.00
	May 29, Pratt & W.	15,000.00
		175,233.33

1905	Jan. 11, P & L	8,364.63
	Jan. 11, P & L	6,000.00
	Jan. 20, R. L. Shaw	25.00
	Jan. 30 B. R.	11,204.25
	Feb. 14, R. L. Shaw	25.00
	Apr. 20, Redfield	23,628.96
	Apr. 20, Redfield B & M	12,500.00
	Apr. 20, Memo. bills	12,230.00
	Apr. 20, Redfield inst.	3,127.54
	May 24, R. L. Shaw	325.00
	June 20, P & L	12,000.00
	Sept. 7, Bradford	7,000.00
	Sept. 7, Sundry item	38,802.95
1906	Jan. 24, Pratt & W	5,000.00
	March 24, Bills dis.	35,000.00
		175,233.33

Q. Mr. Hogencamp, you made an assignment of this bond and mortgage, it appears, by Exhibit 3; I show you Exhibit 3 in this case, which is the assignment from you to Dwight S. Harding of the bond and mortgage in suit, what other property did you assign, or convey or mortgage to Mr. Harding on the same day? A. There was the $12,000 Denton mortgage, the mortgage in suit; there was the $13,000 mortgage of Shaw; there was a mortgage on my house down there at Deal, for $35,000; and a mortgage on my house at Paterson for $10,000.

Q. Did you also assign to Harding the certificate of the Elberon Water & Light Company? A. Not that I recollect.

Q. Did you own stock in the Elberon Water & Light Company? A. I think I had some of the stock, I do not recollect now. It was not very valuable.

Q. Whom did you assign it to? A. I do not recollect.

Q. When did you assign it? A. I do not recollect.

Q. Don't you recollect that you assigned it to the bank? A. The Elberon Water & Light Company stock?

Q. Yes, don't you recollect, Mr. Hogencamp, that Mr. McCrea drew an assignment of that stock in that water company from you? A. I won't deny it now, I say I do not recollect it. If you bring anything to my attention, that will refresh my memory.

THE VICE CHANCELLOR: There is a book that you have been referring to here, which shows certain property which was in the possession of the bank, and perhaps, by a reference to that, you can tell whether or not you assigned it to the bank.

Q. Will you just look at that book and see whether you assigned stock in this Water & Light Company to the bank at that time? A. I don't know where to look for it.

BY THE VICE CHANCELLOR:

Q. Well, awhile ago you referred to the first part, I think, of General Ledger No. 7, and there identified a lot of items of property that was assigned to the bank—mortgages and bonds and

one thing and another—and told what became of them: Now, wasn't it the custom of the bank to keep a record of any property assigned to it? A. I don't remember anything about that.

Q. You do not know where you can find it at all, do you? A. No, sir.

THE VICE CHANCELLOR: Well, I notice myself, in General Ledger No. 8, page 3, there is the following item: "Elberon Water & Light Company, June 14, 1906, 1st, Mortgage 6s, &c.," showing there is an item there; now I do not know whether that was this witness's property or not.

BY MR. VREDENBURGH:

Q. (Drawing the witness's attention to the item just referred to by the Court) Now look at that, and say whether you assigned that property to the bank? A. I have no recollection of it now.

Q. Did you ever own it? A. Individually.

Q. In any way. A. My recollection now is that those were securities that were up for indebtedness of W. F. Inman and Robert Appleton; that is my recollection of it.

Q. What were those securities, Mr. Hogencamp?

THE VICE CHANCELLOR: What securities?

Q. The securities which you say were owned by this Inman and Appleton—were they in your name? A. No, sir; not that I know.

THE VICE CHANCELLOR: That is to say, the bonds which he says were put up by Appleton and Inman were not in his name.

Q. Mr. Hogencamp, had you ever any stock or bonds of the Elberon Water & Light Company? A. I had some as security for moneys advanced to Mr. Inman.

BY THE VICE CHANCELLOR:

Q. By you, or by the bank? A. By myself.

BY MR. VREDENBURGH:

Q. What did you do with those? A. I guess I have got them yet.

Q. Is that all that you had? A. Except what I held by the bank.

Q. And what did you hold for the bank? A. I do not recollect now, except as it says on here.

BY THE VICE CHANCELLOR:

Q. Well, did you hold those, or did the bank hold them? A. The bank held them.

Q. That is not what he asked you; he asked you what you had, not what the bank had, what *you* had; did you ever have any bonds or stock of the Elberon Water & Light Company in your own individual ownership, belonging to you? A. Yes, sir.

BY MR. VREDENBURGH:

Q. What did you do with them? A. I have got them yet.

Q. Had you certificates in a Trust Company representing that Water Company?

THE VICE CHANCELLOR: What Trust Company?

MR. VREDENBURGH: Any Trust Company, your Honor.

THE VICE CHANCELLOR: I do not understand the question; maybe the witness does. Do you mean did he deposit them somewhere, or have them in a strong box, or what? When you say "Did he have them in a trust company" I do not know what you mean.

MR. VREDENBURGH: No, did he have the trust company certificates.

THE VICE CHANCELLOR: Oh, you did not ask him that.

Q. Did you have a trust company's certificates with reference to that Water Company? A. I think I did.

Q. What trust company? A. I think it was, if I mistake not, the Columbia Trust Company.

BY THE VICE CHANCELLOR:

Q. Of New York? A. Of New York.

BY MR. VREDENBURGH:

Q. Did you own them individually? A. Whatever I had there was mine.

Q. What did you do with them? A. Why, I have got them.

Q. Do you say you never assigned any of those to the bank? A. What the bank had was a different proposition from what I had.

Q. Did you assign any to the bank?

THE VICE CHANCELLOR: Of your own, he means now.

A. No, sir.

BY THE VICE CHANCELLOR:

Q. He is confining his questions now, Mr. Hogencamp, entirely to securities that you had, directly or indirectly, in the Elberon Water & Light Company—your own securities—and he wants to know whether you ever assigned to the bank any such securities, whether they were bonds and stock of that company, or whether they were trust company's certificates showing your interest in securities of that company? A. I have

got them yet, my own certificates; I have got them yet.

Q. (Question repeated.) A. I understood I was asked whether I ever assigned them, and my answer is no, I never did.

By Mr. Vredenburgh:

Q. In whose name did those securities appear which belonged to the bank,—were they in your name? A. I do not recollect now; they may have been, and they may not; I say I do not recollect it at the present time.

Q. Don't you recollect that at the time you made this mortgage on your house of assigning to the bank certificates of a trust company representing an interest in the Elberon Water & Light Company? A. I do not.

Q. Did you not have those certificates in the name of David W. McCrea? A. I could not say now.

Q. Eh? A. I could not say now.

Q. Didn't you ask to assign them to the bank then? A. I couldn't say now; I don't recollect it.

By the Vice Chancellor:

Q. I do not understand that testimony now, Mr. Hogencamp, because you distinctly answered a few moments ago in those questions you were asked as to whether you ever assigned to the bank any securities, directly or indirectly, of the Elberon Water & Light Company which you owned "no, I never did," now, Mr. Vredenburgh asks you whether it is not a fact that you owned certificates in that Water Company which stood in the name of David W. McCrea, and whether you did not direct Mr. McCrea to transfer those to the

bank at the time that you mortgaged your house to the bank, and you say you do not recollect; now, how can those two things be true—how can you recollect that you never did a thing, and then, a few minutes after, say "Well, I don't recollect whether I did do it or not"? Now, which it true? A. Well, all I can say about it is just this,—as I understand now, there were two distinct items there, one belonging to me personally, and one possibly in my name as Trustee; that I do not recollect now. As far as my own are concerned, my own securities, I have got them. As far as the bank securities are concerned, if they were in my name, I undoubtedly assigned them to the bank.

Q. But you have either misconceived or misunderstood, or in some other way mis-answered Mr. Vredenburgh's question: His question was this, Was not David W. McCrea a trustee for you—not for you as trustee, but for you as an individual—of certain securities of the Elberon Water & Light Company; and did not you direct Mr. McCrea, acting for you, to transfer such securities, or some part of them to the bank? That was the question. A. As to the directing him to act in transferring securities for me to the bank, I have no such recollection as that. I am satisfied that whatever securities I had, I have got now; whatever securities were up there, they were in possession of the bank, and in the reorganization and changes of the Elberon Water & Light Company, it was sold out once or twice, and new securities issued, and the bonds deposited and certificates taken, and new bonds taken and the details of it now I am unable to recollect.

Q. No one asked you anything that remotely resembled that whatever; what you were asked

is this, whether or not you, as an individual, did not own certain rights represented by something in the Elberon Water & Light Company, and whether those rights that belonged to you, or some part of them, did not stand in the name of McCrea, and whether you did not direct McCrea to transfer such rights of yours or some part of them, to the bank at the time you mortgaged your house to the bank? A. I never directed him to assign any portion of any of my securities to the bank—

THE VICE CHANCELLOR: Now, stop there, if that is the fact, and do not go any further. Now, Mr. Vredenburgh, go ahead.

MR. VREDENBURGH: I have given notice to the other side to produce the mortgage which the witness speaks of, and I have a certified copy of it here. If you haven't it, we can use that.

THE VICE CHANCELLOR: Which one is it, Mr. Vredenburgh? He has spoken of three or four mortgages.

MR. VREDENBURGH: This is the mortgage from Hogencamp to Harding about which he spoke.

THE VICE CHANCELLOR: On what property?

MR. VREDENBURGH: In the City of Paterson.

THE VICE CHANCELLOR: What is your answer, Mr. Lane, to the call?

MR. LANE: I haven't it here. I consent to the use of the copy, anyhow.

Q. I show you this certified copy, and ask you whether that is not one of the mortgages to which you referred as having been given by you to Harding? A. Yes, sir; that is one of them.

MR. VREDENBURGH: I offer it in evidence.

MR. LANE: I object to it as immaterial and irrelevant.

THE VICE CHANCELLOR :I will overrule the objection and admit the paper. It is marked J. B. V-17. It is a mortgage dated March 22, 1906, by Hogencamp and wife to Dwight S. Harding, to secure the sum of $10,000 at 6% on premises in the City of Paterson, New Jersey recorded in Book F of mortgages, Passaic County, page 64.

Q. I now show you certified copy of the mortgage which you said you gave on your house at Deal—is that a copy of that mortgage on your house at Deal, that you spoke of? A. I presume so, without looking at it.

MR. LANE: It is admitted that it is.

(The certified copy of the mortgage is offered in evidence by Mr. Vredenburgh).

MR. LANE: I make the same objection to this offer.

THE VICE CHANCELLOR: I make the same ruling. The paper is admitted. It is marked J. B. V-18. It is a mortgage from Hogencamp and wife to Harding, on property at Deal, to secure $35,000, at three months, at 6%. It is dated the 22d of Mar. 1906, and recorded on the 2d of April, 1906, in Monmouth County, in Mortgage Book 318, page 464.

Q. Who was the assignee, Harding? A. I never knew him.

Q. Mr. Hogencamp, do you mean you never saw Harding? A. I never saw him, that I know of.

Q. You admit the receipt of $35,000 from him on the mortgage on your house at Deal, how did he pay you that? A. He never did.

Q. You admit the receipt from him of $10,000 on this mortgage, J. B. V-17, on the house at Paterson,—how did he pay you that? A. He never paid it.

Q. I show you the Assignment of Mortgage, Exhibit C-3, in this suit, and I call your attention to the fact that, under seal, you admit the receipt of $12,000 from Harding, do you notice? A. Yes, sir.

Q. And you covenant that that amount is due on that mortgage the question is, how did he pay you that? A. He never paid it.

Q. Whom did you deliver these papers to? A. Mr. Hanley.

Q. Who was Hanley? A. He was subsequently President of the Second National Bank of Jersey City.

By the Vice Chancellor:

Q. What do you mean by the use of the word "subsequently" there? A. Well, shortly after that time.

Q. Shortly after the time you delivered them to him? A. Shortly after; yes, sir; I think.

Q. Think and get it right before you testify. A. Well, I guess he was President at that time.

Q. At the time you delivered them to him? A. Yes, sir.

By Mr. Vredenburgh:

Q. When you executed these papers you understood that Mr. Harding was to loan you how much money? A. $35,000.

Q. $35,000? A. Yes.

Q. And you gave him this mortgage for $35,000 on your house at Deal, and the mortgage of $10,000 on your house at Paterson, and an assignment of this mortgage for $12,000 on the property at Lakewood, and an assignment of the note and mortgage of Shaw for $13,000 on the stable property in Jersey City, as security for that $35,000 did you? A. Gave them to him.

Q. (Question repeated.) A. Not to him, no, sir; the mortgages were made to him, but the transaction was with Mr. Hanley.

BY THE VICE CHANCELLOR:

Q. He did not ask you anything of that sort, he asked you this, Mr. Hogencamp (and I must repeat these things, or otherwise no reviewing court in Christendom can understand this case): You have just testified five minutes ago that you understood that Mr. Harding was to loan you $35,000 didn't you testify to that? A. Yes, sir.

Q. And Mr. Vredenburgh asks you whether you were giving Mr. Harding as security for that loan, the following things: A mortgage on your house at Deal for $35,000; a mortgage on your house at Paterson for $10,000; an assignment of the Denton Lakewood mortgage of $12,000, and an assignment of the Shaw Jersey City stable property mortgage of $13,000, what is your answer? A. I was to give it to him if he would furnish the money.

Q. Well, didn't you give them to him? Everyone of those things are here, every single one of them; there is the mortgage to Harding for $35,000, on the Deal property, there is the mortgage to Harding of $10,000 on the Paterson property, there is the assignment of the $12,000 Denton Lakewood property mortgage, and there is the assignment of

the Shaw $13,000 Jersey City stable property mortgage: Now, why do you say you *were* to do it, you *did* do it didn't you? A. I executed the papers.

Q. That is all he asked you. Now he asks you whether you executed those papers with the understanding that if Harding loaned you this $35,000 those various securities were to be held by him for the re-payment of that money? A. Yes, sir; that is correct.

By Mr. Vredenburgh:

Q. Mr. Hogencamp, Mr. Harding did not loan you the money, did he? A. He did not.

Q. When he did not loan you the money, did Mr. Hanley the President of the Second National Bank, say this to you "Here, the Bank will make that loan to you and take it out that way? A. I think he did.

Q. And that was done, eh? A. It was.

Q. Mr. Hogencamp, did you testify, in the suit of Richards vs. Shaw, in answer to this question of the Vice Chancellor's: "In other words, the Bank loaned you $35,000 on certain securities, and with that money you paid off to the Bank this $35,000 worth of notes which you have spoken of?" and your answer was "Yes, sir" do you recollect that? A. I think so.

Q. That is true? A. No, sir; I was mistaken in that.

Q. And then the next question was "Q. And the notes and collateral accompanying them became your property?" and your answer was "Yes, sir."? A. Yes, sir; but I was mistaken.

Q. And did you testify to this also "Q. And these notes then also remained there as collateral did they?" and your answer was "The $13,000,

not the $12,000," and then Mr. Hudspeth asked you "Who got the $12,000 note?" and you answered "I did," and then Mr. Hudspeth asked you "You took that up? A. I took that up." A. Yes, sir.

Q. You testified to that in the former suit, of Richards vs. Shaw, didn't you? A. I think I did; yes, sir.

MR. VREDENBURGH: Mr. Lane, have you here the minutes of the Directors of the Bank for September 7th, 1905?

MR. LANE: I believe they are down on my desk; I will send for them.

Q. Mr. Hogencamp, you have spoken of some money going to a Trustee account, how is that account entered in the books of the bank? A. In the General Ledger, under the head of "W. Hogencamp, Trustee," with a pencil memorandum underneath of "Denton."

Q. Well, let us see where it is? A. (The witness refers to Individual Ledger, No. 17, A to L., page 688).

THE VICE CHANCELLOR: It is here "W. Hogencamp, Trustee." The first item of of charge is "Nov. 14, 1901," and the first item of discharge "Nov. 14, 1901."

Q. The last item in that account is when? A. July 28, 1902, on one side, and August 5, 1902, on the other side. The word "Denton" does appear in pencil up under the name "Hogencamp."

BY THE VICE CHANCELLOR:

Q. Who wrote that word "Denton" there, if you know? A. That is my writing.

Q. That "W. Hogencamp, Trustee" is not in your handwriting, is it? A. No, sir.

By Mr. Vredenburgh:

Q. Was that account ever balanced?

The Vice Chancellor: Are you asking him now independent of what appears in the book?

Mr. Vredenburgh: Yes.

The Vice Chancellor: (To the witness) What is your memory, independent of what appears in that book, as to whether or not the account was ever balanced?

The Witness: It is balanced on that page of the ledger.

The Vice Chancellor: In that book?

The Witness: Yes, sir; in that book; I think so.

The Vice Chancellor: He says it appears to be balanced in that book on that page of the ledger; it does not appear to me to be balanced on that page of the ledger.

The Witness: Well, I don't think it was ever formally balanced. It was balanced—

Mr. Lane: It was balanced in lead pencil.

The Vice Chancellor: That is not what bookkeepers call "balancing," he means drawing the red lines, and putting the figures on each side; that is what Mr. Vredenburgh asked him.

Q. Was that settled between you and Mr. Denton in any way (referring to the "W. Hogencamp, Trustee" account.) A. I don't know.

Q. Did you ever inform Mr. Denton that you were keeping such an account? A. Yes, sir; he knew that.

Q. When did you inform him? A. Oh, various times—all along.

Q. Was there any other account between you and Mr. Denton in those books, in any name? A. Yes, sir.

Q. What name? A. His Rent Account in that book; there was a rent account, I don't know whether it was in that book, or which; I know there was a rent account.

Q. In what name was that? A. "W. Hogencamp, Rent Account." I think; that is my recollection of it.

Q. Was there any account there in the name of "W. Hogencamp, Attorney," in which Mr. Denton was in any way interested? A. Yes, sir.

Q. Did he know about that, too? A. Yes, sir.

Q. What was the distinction between the three? A. Well, I don't know. They were opened at different times. I suppose they could have all been put in one account—

By the Vice Chancellor:

Q. He did not ask you that; he asked what distinguished them for instance, if you got money from Mr. Denton, or that belonged to Mr. Denton how did you determine which one of those three accounts they should go in, "W. Hogencamp, Trustee," "W. Hogencamp, Attorney," or the rent account? A. I don't know whether they were coincident as to date, or not, your Honor.

The Vice Chancellor: All right; he says he don't know of any distinction; he says he don't know whether they were coincident as to the date.

By Mr. Vredenburgh:

Q. And do you not know now when these several

accounts, so kept, commenced, or when they ended except the trustee account that you have just mentioned, do you? A. No, except by reference to the ledger or ledgers.

THE VICE CHANCELLOR: The Bank Ledgers you mean?

THE WITNESS: The Bank Ledgers.

Q. Was the account of "W. Hogencamp, Trustee" ever settled as between you and the Bank, or between you and Mr. Denton, either one? A. I couldn't say.

Q. Was the account that was there as "W. Hogencamp, Rent Account" ever balanced on the books of the Bank? A. I can only tell by reference to the books.

BY THE VICE CHANCELLOR:

Q. You cannot tell without reference to the books? A. Not without reference to the books.

BY MR. VREDENBURGH:

Q. Was it ever settled as between you and Mr. Denton? A. I do not recollect now, sir.

BY THE VICE CHANCELLOR:

Q. Of course, the books of the Bank would not tell that, would they? A. No, sir.

BY MR. VREDENBURGH:

Q. Did Mr. Denton bring you his checks at any time? A. Yes, sir.

Q. When? A. A reference to the account will show.

Q. Well, refer to the account and show.

THE VICE CHANCELLOR: I do not understand what you mean by that, Mr. Vredenburgh; do you mean, "did he bring you

all of the checks of Denton that had gone through the bank up to a certain date?"

MR. VREDENBURGH: Yes.

THE VICE CHANCELLOR: How will any reference to any books of the bank show that, Mr. Hogencamp? What Mr. Vredenburgh asks you, or intended to ask you, was this: Was there ever a time when Mr. Denton brought to you all his cancelled checks on the Second National Bank for any purpose?

THE WITNESS: No, sir.

Q. Never? A. No, sir.

Q. Did he bring you any of his checks? A. Yes, sir.

Q. What checks did he bring you? A. Checks of his own.

Q. From when to when? A. I do recollect now.

Q. For what purpose? A. To check off his account.

BY THE VICE CHANCELLOR:

Q. The account between you and him, then? A. Yes, sir.

Q. Not between him and the bank? A. Between him and the bank—his bank checks.

THE VICE CHANCELLOR: Now, he says the purpose of the bringing of the checks to him was to check up the account between Denton and the Bank—I understood it was to check up the account between him and Hogencamp.

THE WITNESS: Well, I presume it was incidental to working the two together.

BY MR. VREDENBURGH:

Q. Weren't they brought to you after you were

out of the Bank? A. I don't remember when they were brought to me.

By the Vice Chancellor:

Q. Was it any of your business to check up the accounts of depositors with the Bank? A. No, sir.

Q. And it is not likely that Mr. Denton brought you any of his checks to check up any account with the Bank—weren't they solely brought to you not because you were President of the Bank, but because you had dealings with Mr. Denton? A. It is very likely that is so, sir.

By Mr. Vredenburgh:

Q. Where were they brought to you? A. My recollection is they were brought down to Deal, or down to Deal Beach.

Q. What else besides checks were brought—did he bring his bank books? A. As far as he had them—of course that is, as far as he said he had them.

Q. And he brought his check books? A. As far as he said he could find them.

Q. And left whatever he brought there with you? A. Yes, sir.

Q. Did you ever return them to him? A. No, sir.

Q. You still have them down there, eh? A. Yes, sir.

Q. I ask you, Mr. Hogencamp, for the date of that York item, which you said was really yours but was in the name of York on the ledger. A. I did not say that.

The Vice Chancellor: He did not say that; as I recall it, he said it was Denton's.

Q. Well, have it that way—which you said was Denton's?

THE VICE CHANCELLOR: As I recall it, the course of the testimony upon that day was this: He was looking over the Call Loans in General Ledger, No. 7, and you were examining him as to the names of any other person than himself and Littell on which he borrowed money for himself from the Bank, and finally you pointed to "York" and asked him whether that was not one of them; and he said no, that he thought that was for Denton, and then you asked him to show how Denton ever got the benefit of that by anything in the books of the bank crediting Denton with any such money and he said he could not do it. That is my recollection; is that your recollection, Mr. Hogencamp?

THE WITNESS: Yes, sir.

Q. And where is that? A. That is in General Ledger, No. 7, in the Call Loan Account. (Witness turns to General Ledger, No. 7, page 16, and says that the date of the items was May 11, either 1899 or 1900, that he cannot tell from the way the book is kept which it is). I am not satisfied now what that transaction was.

Q. Do you recollect the property in 149th & Seventh Avenue, New York? A. Yes, there was a property up there.

Q. Do you recollect getting any money on account of that property? A. Without looking, I could not tell now.

Q. Well, whose property was that? A. I don't know what you are talking about. Is that 149th St.?

Q. And Seventh Avenue, New York City? A. 1905?

Q. Yes. A. Well, Denton was the actual owner of it; I don't know who the title was in.

Q. And how much was paid you on that property? A. I think there was a first payment of $10,000, and there was another payment of $83,534.00.

Q. When—what was the date of those two payments? A. May 1st and May 2d.

Q. Of what year? A. 1905.

Q. May 1st, 1905? A. Yes.

By the Vice Chancellor:

Q. And what was that? A. $10,000.

Q. And what was the other? A. $83,534.

By Mr. Vredenburgh:

Q. When? A. May 2nd.

Q. 1905? A. Yes, sir.

Q. The check of $10,000 came from Max Marx? A. Yes, I think so.

Q. I show you a copy of that check, and ask you if, by looking at that, you can refresh your mind as to that check? A. I know I got $10,000 from Max Marx.

Q. A check to your order? A. I think it was.

By the Vice Chancellor:

Q. Well, you got the money on it? A. I certainly did.

The Vice Chancellor: I should think that would be enough.

By Mr. Vredenburgh:

Q. The date of the check is March 9th? A. I may not have received it then.

Q. And the eighty three thousand dollars apparently was paid you on April 12th, 1905? A. The $83,534, I have got on my memorandum, was paid on the 2nd of May, 1905.

MR. VREDENBURGH: I call for the Minute Book of the Board of Directors.

MR. LANE: Here it is (producing a book).

MR. VREDENBURGH: Well, I won't look at it. Have you the books here which show the dividends paid on this stock that was transferred to Mr. Denton?

MR. LANE: I have no book which shows to whom the dividend was paid.

MR. VREDENBURGH: Have you the dividend book?

MR. LANE: The only dividend book I know of is included in the General Ledger.

Q. Is there any other dividend book besides that one included in the General Ledger? A. None that can be found.

Q. There was one but it was lost? A. So Mr. Hasking says, or Mr. Bailey.

Q. Well, General Ledger No. 9, is that lost, too? A. Oh, no, the General Ledgers are all here.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Hogencamp you have testified with respect to the payment of $38,802.95 by you to the Bank on September 7th, 1905: Was that in satisfaction or payment of the Shaw indebtedness? A. It was not.

Q. How do you know that it was not? A. My recollection is that I took up everything that was

standing to the balance of Suspended Debt, except the Shaw matters and Pratt & Wellman.

Q. And how much was the Pratt & Wellman matter as appears upon the books of the Bank? A. There was a balance due from them of $10,000; and the Shaw matter, that was $25,000; and those items were allowed to stay.

Q. I now show you a paper dated October 17, 1905, and ask you whether that refreshes your recollection as to which you took up, and which you did not? A. Yes, sir; I am satisfied that those two notes were not taken out of Suspended Debt.

Q. Was that (referring to the paper just shown the witness) given by you, upon or about the day of its date, to the Bank? A. Yes, sir.

MR. LANE: I offer that paper in evidence.

MR. CAREY: I think it is not competent or material in this case as evidence against these defendants.

THE VICE CHANCELLOR: Well, what are you now engaged in—what are you doing?

MR. CAREY: I understood he offered it in evidence.

THE VICE CHANCELLOR: I understood he did; now, what do you do?

MR. CAREY: I object.

THE VICE CHANCELLOR: State the ground of your objection?

MR. CAREY: It is incompetent.

THE VICE CHANCELLOR: You do not mean that, do you? I do not see how you can say that a paper is incompetent that a man

says he wrote and signed himself. The proof is perfectly clear that the paper is competent. "Incompetent" means that a paper has not been sufficiently proven. Now, he certainly has proven everything there is to prove about the paper.

MR. CAREY: It is not evidence as against the defendants in this case.

THE VICE CHANCELLOR: Oh, well, that is another matter. I understand your real objection is that this is not relevant?

MR. CAREY: It is not relevant.

THE VICE CHANCELLOR: And that they cannot make evidence as against your clients by papers which passed between Hogencamp and the Bank?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: What about those grounds of objection, Mr. Lane?

MR. LANE: It shows that Mr. Hogencamp on the 17th day of October, 1905, guaranteed the payment of these very notes. Now, that he guaranteed them at that time, I think, is a relevant fact, and that the paper by which he made that guarantee is also, and must be, relevant. It actually guaranteed the payment of a note which they say was paid on September 7th, and it seems to me to be perfectly proper.

THE VICE CHANCELLOR: Before making any ruling I will permit you to cross-examine, Mr. Cary, about the date and the time, &c., of the delivery of this paper, if you so desire. My notion is that it is only an efficient instrument of proof if it was created and originated at a certain time. If it originated yesterday, I do not think

it would have any relevancy, of course, and ought not to be admitted in evidence; but if he proves that the time as to which I am called upon to rule upon the paper was a date which would be otherwise relevant, I think, it is relevant. I will permit you to cross-examine to bring out that fact, if you so desire.

By Mr. Carey:

Q. When did you first see this paper which has just been shown you by Mr. Lane? A. The day of the date of it.

Q. And when did you next see it? A. I did not see it for quite some time; I think Mr. Lane called my attention to it a week or so ago.

Q. And how many times did you see it between its date and a week or so ago? A. I don't think I ever saw it between its date and week or so ago; I have no recollection of seeing it.

Q. In whose handwriting is it? A. Mine.

Q. At the time of its date you had begun negotiations for a loan through Mr. Hanley, had you? A. I am not dead sure about that.

Q. At whose suggesteion did you write this? A. I do not recollect; it is only a matter of recollection now, I am not positive about it, I think it was Mr. Hanley.

By the Vice Chancellor:

Q. Had Mr. Hanley become President of the Bank on October 17th, 1905? A. I do not re- not remember when he was elected.

Q. Had you retired from the Presidency of the Bank on October 17th, 1905? A. I don not remember that date, sir. Mr. Hanley had been there, off and on, for some time; but the minutes of the

Bank will show when he was put in as a Director and as President.

Q. Answer my question (Question repeated.) A. I think not.

Q. You think you were still President? A. I think I was still President; yes, sir.

BY MR. CAREY:

Q. And what connection had Mr. Hanley with the Bank at that time? A. I do not recollect now, sir.

Q. To whom did you deliver this paper? A. I don't know.

Q. You delivered it to yourself? A. I don't know; I couldn't recollect.

THE VICE CHANCELLOR: Now, Mr. Lane, I will hear you as to how you have shown any right to have this paper introduced in evidence. The witness says he does not know what he did with the paper; he does not know whether he ever delivered it to anybody, or not.

MR. LANE: I will examine him if your Honor please.

THE VICE CHANCELLOR: Yes.

BY MR. LANE:

Q. Do you remember, Mr. Hogencamp, that there was some difficulty in the Bank prior to October, 1905, and new interests were coming in? A. Yes, sir.

Q. And do you remember whether Mr. Hanley represented those new interests?

MR. CAREY: I object to that question as leading.

THE VICE CHANCELLOR: I sustain the objection.

Q. Who represented those new interests? A. Mr. Hanley and Mr. F. W. Child.

Q. And when you sold your stock in September, 1905, you sold it to those new interests, did you not?

MR. CAREY: I object; the question is leading.

Q. When you sold your stock in September, 1905, whom did you sell it to? A. F. W. Child; and Mr. Hanley was interested in it, as I was informed.

MR. CAREY: I ask that the answer be stricken out as incompetent and irrelevant. It is hearsay, also, it was information.

THE VICE CHANCELLOR: I will strike out so much of that answer as states the information, what he calls his information, and I will allow that much to stand in which he states the persons to whom he actually sold the stock; that, of course, is relevant and proper under this part of the examination. He says he sold it to F. W. Child.

Q. When did you first see Mr. Hanley? A. I do not recollect that, sir.

Q. Did he become a Director of the Bank? A. Yes, sir.

Q. Did you see him when he first became a director of the bank? A. Yes, sir.

Q. Do you remember at whose request that paper was signed?

MR. CAREY: He has not testified as yet that it was signed at the request of anybody.

THE VICE CHANCELLOR: You asked him that very question, Mr. Carey, and he said "at Mr. Hanley's request."

MR. CAREY: My question was "At whose suggestion?"

THE VICE CHANCELLOR: Well, I think "suggestion" and "request" practically mean the same thing for this purpose. I will overrule that objection.

A. I think it was Mr. Hanley's.

Q. At the time you signed it whom did Mr. Hanley represent?

MR. CAREY: If he knows.

THE VICE CHANCELLOR: I think the question had better be "does he know." I suggest that it would be the proper question.

Q. Do you know whom Mr. Hanley represented at that time?

THE VICE CHANCELLOR: (To the witness) Yes or no. You do know or you don't know.

A. I don't know. I think he represented the Second National Bank.

THE VICE CHANCELLOR: Strike out the answer and read the question.

Q. (Question repeated.) A. Yes.

Q. Whom did he represent? A. The Second National Bank.

BY THE VICE CHANCELLOR:

Q. Of which you were President? A. Whether I was President at that particular time, or not, or whether Mr. Hanley was, I do not recollect now.

Q. You just said a few minutes ago, in answer to my question, that you were still president on October 17th, 1905. A. Well, Hanley was in and out.

By Mr. Carey:

Q. Do you mean that Hanley was in and out of the Presidency?

The Vice Chancellor: He must mean that, because I was asking him whether he did not testify that he was still President, and he said "Mr. Hanley was in and out."

By the Vice Chancellor:

Q. Do you mean that Hanley was in and out as President? A. That is what I mean to say.

Q. Some time he was President and some time you were President, is that right? A. No.

Q. What did you mean? A. Well, there was a change in the officers there—

Q. Well, of course there was, but we are asking you whether, on the 17th day of October, 1905, you had not still continued to be, right up to that time, President of the Second National Bank. A. Without referring to the minutes, I could not say.

Q. Then, you were mistaken when you answered me a few minutes ago that at that time you were still President? A. I want to correct myself, as far as that goes, yes, sir.

Q. Then you do not know whether you were still President, or not, is that it? A. I do not recollect now; no, sir.

By Mr. Lane:

Q. You say you do not remember to whom you delivered this paper? A. No, I have no positive recollection ot it now.

Q. Did you, after the day of its date, have it in your possession? A. No, sir.

MR. LANE: I offer the paper.

THE VICE CHANCELLOR: I shall exclude it in the present state of the proofs, unless it is relevant, and it can only become relevant if it has relation to some of the parties to this suit. If he wrote that paper and delivered it to a bootblack, who had no connection with this suit, guaranteeing the bootblack that he would pay this, I do not think that could have any bearing on this suit.

MR. LANE: No, but he testified that Mr. Hanley was in and out of the bank, as the minutes disclose was the fact, and that there were new interests coming in, and there were changes being made, and that he sold his stock to certain new interests, and that it was at the suggestion of Mr. Hanley as he recollects it, that he wrote this paper. Now, he says he delivered it to somebody; that it was not in his possession; that he cannot, at this date, recollect distinctly to whom he delivered it; but I think the inference is that he delivered it to somebody for the Bank.

THE VICE CHANCELLOR: I do not think I can make this paper evidence by inference. Until you can show me that it has some connection with the parties to this suit, I do not think I ought to admit, as against these defendants, an undelivered paper, a paper that was not delivered. Of course there is this rule (which I suppose counsel, and certainly I, have in mind) that if a party to a suit has written a paper against his own interest, which we

term an admission, it is immaterial to whom he wrote it or what he did with it—the mere fact that he wrote, at a certain time, a paper which contains evidence against himself, makes that paper admissible; there is no doubt about that. But that is not this case. This man is a party and you are profering him as a witness. At the time of these transactions he was President, or just had been the President of the Bank; these bonds and mortgages ran to him, individually; he has given testimony about whether he owned them individually or for somebody else; and now you introduce a paper which is favorable to your side of the case, written by this man, signed by him, and do not prove what he ever did with it; and I do not believe that makes that paper evidential. I think you have got to show that he did something with it so that, in some way or other, it became an effective instrument of proof. To use an illustration, suppose he gave it to his wife, —it would have no effect on anybody concerned in this suit.

Q. Do you recollect, Mr. Hogencamp, the person to whom you delivered it?

MR. CAREY: I object to that. He has already testified that he does not.

THE VICE CHANCELLOR: I will overrule that objection. He is asked now whether, in the last seven minutes, he is of any different state of mind than he was seven minutes ago. He has said all along he did not know to whom he delivered it.

MR. LANE: Well, I presupposed that he

does not at this tme remember the person to whom he delivered it.

Q. Do you know what position the person to whom you delivered it had, if any?

MR. CAREY: I object to that, because it does not appear as yet that he made a delivery of it to anybody.

THE VICE CHANCELLOR: I sustained that objection.

Q. Did you deliver it, Mr. Hogencamp? A. I certainly did.

Q. Now do you remember what position the person to whom you delivered it held, or what connection he had?

MR. CAREY: I object to that, because it is assuming that he had some connection with something or someone, which is indefinite.

THE VICE CHANCELLOR: I sustain the objection, because if he cannot remember to whom he delivered it, how can be remember what connection that person had with anybody.

Q. Well, for what purpose did you deliver it?

MR. CAREY: I object to that, because it has not been shown as yet that he made a delivery of it, except the mere fact that he says "Yes, I delivered the paper," but that does not mean anything; that is no evidence of anything which would validate this paper as an instrument of evidence.

THE VICE CHANCELLOR: I sustain that objection. "Delivery" is, so to speak, a word of conclusion in law. What consti-

tutes a delivery is the facts, I mean the facts that are testified to. The Court will then say whether that constitutes delivery, or not. When you use the word "Delivery" you are rather using a word that sums up in itself and includes the facts, which may or may not constitute delivery. I think what this witness has a right to disclose fully, under your question, is what he did with this paper. We will then determine whether that is a delivery, or what effect it had, legal or otherwise; and I do not think that you have a right to assume by the question that he did the legal thing known as "delivering" it. For that reason I sustain the objection.

Q. What did you do with the paper, Mr. Hogencamp? A. I certainly gave it to someone, because it was not in my possession, and has not been since.

MR. CAREY: I ask that that be stricken out, because it is evidently not a statement of fact but a statement of a conclusion of the witness.

THE VICE CHANCELLOR: I overrule that motion.

Q. Do you know the name of the someone to whom you delivered it?

MR. CAREY: If the Court please, I think that question ought not to be put any more. That question has been asked him four or five times, if he remembered to whom he gave that paper, and he is now repeating it.

THE VICE CHANCELLOR: That is only a

matter of how long the Court's patience will last. I overrule the objection.

A. May I look at the minute book, your Honor, to refresh my memory?

BY THE VICE CHANCELLOR:

Q. How will the minute book refresh your memory as to the person to whom you delivered a certain piece of paper? You would not find it in the minute book. A. No, I won't find it in the minute book, but as to whether a person was in the Board at that time, or in the Bank at that time, or whether they came in subsequently, it would have a great deal to do with my recollection on the matter.

THE VICE CHANCELLOR: I cannot permit you to do it. Your counsel may proffer it to you, if he wants to, and we will see what the result is then; but I cannot now permit you to do it.

BY MR. LANE:

Q. You say that a reference to the minute book will help you?

MR. CAREY: I object to the putting of the question in that way.

THE VICE CHANCELLOR: I overrule that objection. He has just said that in my hearing.

A. Yes.

Q. Why? A. It will bring to my mind facts that I will think will appear on there that will lead me to the conclusion as to what was actually done.

Q. Well, why? A. It will refresh my memory by seeing the book.

Q. As to what? A. To the transaction, whether Mr. Hanley was in the Bank at that time, or whether he was not, or what.

BY THE VICE CHANCELLOR:

Q. Now, by "being in the Bank" you mean whether he was a Director or President? A. Director or President, yes.

BY MR. LANE:

Q. How will that refresh your memory as to whom you gave this paper to? A. I am positive that I gave it to someone, and if Mr. Hanley was in the Bank at that time he would be the natural man to give it to,—either him or the Cashier.

Q. Then you are positive you gave it to someone for what?

MR. CAREY: I object to the question. That is leading again.

THE VICE CHANCELLOR: How can you say that is leading? A leading question is one that suggests the answer, and that certainly does not suggest the answer.

MR. CAREY: It is fixing in the mind of the witness that he is positive that he did a certain thing.

THE VICE CHANCELLOR: I will strike out the word "positive." I will not permit the question to be put with the word "positive" in it. He has not said anything about it being positive.

MR. LANE: Oh, yes, he said he was positive. (Former answer of the witness read: "I am positive that I gave it to someone, and if Mr. Hanley was in the Bank at

that time he would be the natural man to give it to,—either him or the Cashier.")

Q. You are positive you gave it to someone then, Why did you give it to someone? A. To show that I considered myself responsible, that I guaranteed the payment of these items.

Q. At that time? A. At that time.

MR. LANE: Now I renew the offer.

THE VICE CHANCELLOR: I shall exclude it in the present state of the proofs. He has not shown that he delivered this guarantee to anybody that makes it binding in this case.

MR. LANE: Then your Honor overrules it?

THE VICE CHANCELLOR: In the present state of the proofs, I do. Until it is connected in some way with some of the persons who hold this bond and mortgage and are trying to enforce it in this suit I shall exclude it.

The paper was thereupon marked for identification "M. L. 1".

Q. How Mr. Hogencamp, will a reference to this paper of October 17, 1907, (M. L. 1) refresh your recollection as to the status of these notes on October 17th, 1905?

MR. CAREY: I object to that. Apparently it cannot refresh his recollection as to the status of these notes.

THE VICE CHANCELLOR: I overrule that objection. He merely asked to answer the question yes or no.

A. Yes, sir.

Q. Now, referring to this paper, dated October 17, 1905 (M. L. 1) will you refresh your recollection and tell me whether the note of $12,000. here in suit, was paid on that date? A. It was not paid on that date.

Q. And does that refresh your recollection as to what you did with respect to the note on that date? A. Yes.

Q. What did you do with respect to the note on that date? A. I guaranteed the payment.

Recess until Wednesday, September 21, 1910, at 10 o'clock A. M.

Jersey City, N. J., September 21, 1910.

Hearing of the cause resumed at 10 o'clock. A. M.

WILLIAM HOGANCAMP, recalled:

BY MR. LANE:

Q. Now, Mr. Hogencamp, have you before you the ledger No. 8, and, if so, please turn to the Suspended Debt Account. A. I have it. It is on page 68.

Q. Now, can you tell me in what way the $25,000. Shaw indebtedness was taken out of that account? A. Yes, sir.

Q. How? A. By a credit on March 24, 1906, as

it appears on the ledger here, of Bills Discounted, $35,000.

Q. And what did that include besides the Shaw $25,000? A. The $10,000 balance of the Pratt & Wellman note.

Q. Now, what is the effect of bills discounted, —what is meant by that? A. Well, that is a matter, I suppose, for the Bank. I suppose the Bank changed that for matters of bookkeeping, or something of that sort.

Q. Did you pay, or was the Pratt & Wellman and the Shaw indebtedness paid to the Bank? A. No, sir.

Q. What did you do with respect to the Pratt & Wellman and the Shaw indebtedness.

THE VICE CHANCELLOR: "You" as an individual, or "you" speaking as the president of the Bank?

MR. LANE: As an individual.

A. I guaranteed the payment of it.

Q. And in what way did you guarantee the payment at that time? A. I think by giving them a note; I do not recollect.

Q. By giving a note to the Bank? A. By giving a note to the Bank, I think.

BY THE VICE CHANCELLOR:

Q. What kind of a note do you mean,—a note in writing, telling them that you would guarantee it? A. I do not recollect the particular transaction now, the shape in which it was done. I know that they had my guarantee there. That item (referring to the item in the book before the witness) I don't know anything about, this entry.

BY MR. LANE:

Q. When you use the word "note" what do you mean; do you mean a paper writing or do you mean a promissory note? A. I do not recollect now. I think I gave them a guarantee; whether there was a note subsequent to that, now, I do not recollect.

Q. Does not the fact of the entry in the Suspended Debt Account of "bills discounted" refresh your recollection as to whether or not it was a note that you at that time gave? A. No. The Bills Discounted would show it.

BY THE VICE CHANCELLOR:

Q. Whereabouts would the Bills Discounted be disclosed? A. In the book called "Bills Discounted?"

MR. LANE: It is not here.

THE VICE CHANCELLOR: Cannot you get it?

MR. LANE: I will send for it.

THE VICE CHANCELLOR: You had better, and clear that matter up.

MR. LANE: Mr. Hogencamp cannot testify to that bills discounted anyhow. Somebody else will have to testify to that.

THE VICE CHANCELLOR: Let me ask a question, because he has left this matter entirely in the air:

BY THE VICE CHANCELLOR:

Q. In answer to Mr. Lane's question you have testified, have you not, as follows,—that in ledger No. 8, page 68, in the Suspended Debt Account, under date of March 24, 1906, there is an item "Bills Discounted, $35,000."? A. Yes, sir.

Q. You further testified that that item was the memorandum which took the Shaw and the Pratt & Wellman items out of the Suspended Debt Account? A. Yes, sir.

Q. Now, please explain in that answer: How did that item serve to take the Shaw notes for $25,000. and the balance of the Pratt & Wellman account of the Suspended Debt Account? A. By charging them into Bills Discounted, and credited Suspended Debts.

Q. Well, would that mean bills presently discounted, on the 24th of March, 1906, or would it mean these old notes and bills of Shaw's, which which were several years old at that time? A. Well, the record will show that, your Honor; I imagine that it was a new transaction.

Q. How are you able to say that the item which reads "March 24, 1906. Bills Disc. $35,000." took out of the Suspended Debt Account the Shaw notes and the Pratt & Wellman note, if you do not know what it was—if you do not know what that item means? A. Well, I do know this, that when I gave that check for $38,802.95 it took out everything that was in Suspended Debt at that time, in which the Shaw notes and the Pratt & Wellman notes were included, with the exception of the Pratt & Wellman $5,000, which was subsequently paid. That left $35,000 to the debit of Suspended Debt Account.

Q. After you had paid the $38,802.95? A. Yes, sir.

Q. But the $38,802.95 you have just said took up the Shaw note. A. No, I did not; pardon me.

Previous answer of the witness read, as follows: "Well, I do know this, that when I gave that check for $38,802.95, it took out everything that was in the Suspended Debt at that time, in which

the Shaw notes and the Pratt & Wellman notes were included, with the exception of the Pratt & Wellman $5,000., which was subsequently paid. That left $5,000. to the debit Suspended Debt Account.

MR. LANE: I do not think the witness had finished his answer.

Q. Was not that a complete answer? Hadn't you gotten through with the answer? A. Yes, sir; but I did not give everything that I meant to say.

Q. Well, but you had gotten through with the answer, you had done completely? A. Yes, sir; I had done completely.

Q. Well, go on and say what further you want to say. A. I mean to say that that answer was not correct; I was under a misapprehension. It left $35,000. in Suspended Debt Account, instead of $5,000. or whichever it was I said.

BY MR. LANE:

Q. Well, now, Mr. Hogencamp, was not your first answer right? Didn't it leave the Pratt & Wellman $5,000. in the Suspended Debt Account?

MR. CAREY: I object to that as leading.

THE VICE CHANCELLOR: Yes, you cannot cross-examine your own witness.

Q. When was the Pratt & Wellman $5,000. paid? A. January 24, 1906.

Q. Was that after you gave the $38,802.95 check?

MR. CAREY: The record shows when that was paid. I object to that.

THE VICE CHANCELLOR: He can answer that. I will overrule the objection.

A. Yes, sir.

Q. It was paid after? A. Yes, sir.

Q. That check you gave on September 7, 1905, didn't you? A. Yes, sir.

Q. Now what else was left in the Suspended Debt Account beside the Pratt & Wellman $5,000? A. The balance of the Pratt & Wellman note of $10,000. and the Shaw notes of $25,000.

Q. That was after the $5,000. had been paid by you for the Pratt & Wellman note? A. Yes, sir.

MR. CAREY: If the Court please, counsel ought not to lead the witness. He has been guilty of it, I think, all through the examination.

THE VICE CHANCELLOR: Well, what are you doing now. There is no question pending. I will admonish counsel not to lead the witness.

Q. And what did you do with that, how was that taken out of Suspended Debt?

THE VICE CHANCELLOR: By that he means the $35,000. which you now say was still left debited to that account.

A. It was taken out and entered on the ledger here on March 24, 1904, "Bills Disc., $35,000."

BY THE VICE CHANCELLOR:

Q. Now what the Court is trying to find out is how you can say that that item "Bills Disc. $35,000." under date of March 24 1906, took these things out of that account, if you do not know what that item means? You have just told us that you did not know what it meant. A. The Discount Journal will show what the item was.

Q. Well what I do not see is this,—how can you testify that an item had a certain effect when, in the very next breath, you say, "I don't know what the item means?" We have all asked you,—at least Mr. Lane and I have both asked you—what that item means; you say "I don't know, I will have to look in some other book to find out what it means, but although I do not know what it means, I am prepared to testify that the effect of it is to take out of this account the $35,000. that was debited to it,"—I do not understand that. If you do not know what it means, how can you say what its effect is? A. I did not make that entry, your Honor.

THE VICE CHANCELLOR: Go on, Mr. Lane.

BY MR. LANE:

Q. Where did the Shaw notes for $13,000. and $12,000. respectively, remain after you had given them to the Bank? A. They remained in the Bank, as I recollect.

Q. Did you ever come into possession of them, as your own property? A. No, sir.

Q. And what did you do, if anything, with respect to their payment? A. I guaranteed the payment of them.

Q. Have you found, Mr. Hogencamp, the book which, in your previous testimony you said contained the items of an account between you and Mr. Denton, and which you then said you did not have with you, and which you then said might be at Paterson? A. Yes, sir.

Q. Where did you find it? A. In Paterson.

Q. Let me see it. A. (Witness produces and hands to examining counsel a book).

Q. Is this the book which you testified with respect to at the first day's hearing? A. Yes, Sir; I think it is.

Q. Is that book in your handwriting? Is that memoranda in your handwriting? A. Yes, sir.

Q. When was it made up, with reference to the dates of the entries in it? A. It is an account form—

Q. When was it made up, with reference to the dates of the entries in it? A. November—

Q. No, no. (Question repeated) A. Well, between August 16, 1901 and November 25, 1901.

Q. Now, what date is August 16, 1901—is it the first date in that account? A. Yes, sir.

Q. And when is November 16, 1901, is that the last date? A. November 25, 1901, is the last date.

Q. At the time you made it up, did you know the moneys that you had received from Mr. Denton, and the purposes for which they were expended? A. Yes, sir.

Q. As appears on that book? A. Yes, sir.

Q. Was it correct at the time you made it up? A. Yes, sir.

MR. CAREY: If the Court please, counsel is leading the witness.

THE VICE CHANCELLOR: Unquestionably; but you will have to interpose your objections so that the Court may rule. I will stop it the very minute you object.

Q. Can you refresh your recollection from it?

MR. CAREY: I object to that.

THE VICE CHANCELLOR: I will permit a yes or no answer as to whether he can. You see what a witness must do to comply

with our rule of law is this,—he must have independent knowledge of the fact inquired about outside of what is in some written record; he must then read over that record and see whether that refreshes his recollection; if it does he must then lay the record down and testify from his recollection. Now, all that we are now trying to find out is whether or not, after the man has read a record he can honestly say whether that refreshes his recollection —that is, whether or not it brings the whole thing back to his mind so that he can now testify about it; and, therefore it is a perfectly proper question to ask him "Does that refresh you recollection?" or "Can you refresh your recollection from it?" He may say after looking at it "No, after I read it over I can frankly say that it does not refresh my recollection." I will not let him go into any hypothesis as to whether it can or not. If the question is put "Does it refresh your recollection?" I shall overrule any objection to that. Do you choose to reframe the question, Mr. Lane?

Q. Does it refresh your recollection? A. It does.

Q. Will you examine it, and refresh your recollection, and then inform us what amounts you credited to Mr. Denton, and what you did with the moneys that you credited to him between those dates?

MR. CAREY: Now, if the Court please, the witness has taken the book.

THE VICE CHANCELLOR: Oh, he cannot

read from the book. There is no question about that. Unless the book itself is evidence, then his reading from it cannot be evidence. What Mr. Lane is entitled to is this,—he is entitled to have this witness take this memorandum and read it completely through, so that he knows exactly what the memorandum contains; and then he is entitled to have the witness lay the memorandum down, and have him testify as to what his refreshed recollection is as to the facts. He is not entitled to have him hold the memorandum in his hand and read it. He may pursue the course which the Court has outlined, or he may attempt some other course and invite the objection of the other side, and then I will rule upon it, whichever he chooses to do. Proceed, Mr. Lane.

MR. LANE: I think there is a question pending.

Q. (Question repeated.)

THE VICE CHANCELLOR: I will overrule that question so far as it calls upon the witness to testify by looking at the book. Now, assuming that Mr. Lane meant by that question that the witness is to refresh his recollection by looking at the book and then lay the book aside and testify I will permit the question.

MR. CAREY: Does Your Honor rule that he now has a right to examine the book? He has already examined it once.

THE VICE CHANCELLOR: I rule that he now has a right to examine the book, under that question, and in my view of what is

proper, he has a right to look at the memorandum and see how it refreshes his mind, and then lay the memorandum aside and give his independent recollection of what it concerns. (To the witness) You may now look at the book, and then, after you have read as much as you desire to read, you are then to lay the book down and testify.

A. (examining the book) I received moneys from Mr. Denton or on his account—

MR CAREY: Now I object.

THE VICE CHANCELLOR: The book must be closed up.

A. (Closing the book and resuming)—$13,050.99.

Q. What was that made up of, what items? A. The $6,000. that was received from the Commercial Trust Company; an item of Thirty seven hundred and some odd dollars from some real estate or transaction in New York; there were two or three little items of between one and two hundred dollars each; and then an item of $2,991.38, that was transferred from another account to make the account good. I had paid out more money. I had paid out $13,050.99.

Q. What account was that transferred from? A. I think it was the Trustee Account.

Q. The Trustee Account? A. I think it was the Trustee Account.

Q. These items that you have referred to, in whose account did they go? A. They went into my personal account.

MR. CAREY: I do not understand that.

THE VICE CHANCELLOR: He means the

$13,050.99 that came from Denton went into his personal account; he did not have it in any separate account; and then he expended it, he says for Denton; and now, I suppose, he is going to be asked how he spent it.

Q. Does a reference to that book refresh your recollection as to what you did with it? A. Yes, sir.

Q. Can you tell us all of the items that you used that money for?

THE VICE CHANCELLOR: Why, I thought the other day that you introduced checks, exhibit 11, to A. to U., which this witness testified was the checking out of that sum of money.

MR. LANE: Exactly, that is in; but the book contains further memoranda as to what it was for. Those checks do not all of them show particularly what they are for, and the memorandum does.

THE VICE CHANCELLOR: All right.

Q. Can you tell us each item that you used those moneys for, without the book before you? A. No, sir.

Q. Were the items correctly transcribed at the time they were transcribed?

Objected to.

THE VICE CHANCELLOR: The question is overruled. It is leading.

Q. How did you make the memoranda? A. From the checks.

Q. And is that all that you had before you at the time? A. Except my recollection as to what they were for.

Q. In what condition was your recollection at that time? A. It was good.

THE VICE CHANCELLOR: We have not found out what time it was, Mr. Lane. He has never yet testified when he made those entries.

MR. LANE: He has testified that he made the entries between August 16, 1901, and November 25, 1901 between the first and last date in the book.

THE VICE CHANCELLOR: If you are satisfied of that, I have nothing to say.

MR. LANE: I offer that page in the book in evidence as a record of past recollection.

MR. CAREY: I object to that, so far as the defendants in this suit are concerned. The entries in this book, made by this witness, are not evidence against the defendants in this case, because they are simply a record of something which he did without their having participated in the record at all, and without that record ever having been brought to the attention of the defendant.

MR. LANE: I do not want the record to indicate that I have offered this book as evidence of any transaction between these parties. What I have offered it for is as evidence of his recollection at the time, and as if he had testified at this time to the facts which are contained in that book. It is not evidence, in the proper sense of that term; but it is evidence of a past recollection; and that is the only purpose for which it is offered.

THE VICE CHANCELLOR: I shall overrule the offer of the book. I find nothing in New Jersey which authorizes me to admit the book for any purpose.

Q. Now I will ask you to look at the book and read from the book the items in it, supplementing your recollection by reading from the book the items in it, and tell us what you did with the money.

MR. CAREY: I object to that, because it does not as yet appear that the memoranda contained in the book are of such character that the witness is entitled to examine and read from them.

BY THE VICE CHANCELLOR:

Q. What are those items, speaking generally, Mr. Hogencamp that you are being asked about? A. The entry of the payments.

Q. Made by you? A. Yes, sir.

Q. And do those entries contain information as to for what purpose the payment was made, whether it was for rent, insurance, or interest, or what not? A. Most of them are interest and—

Q. No, answer my question. Question repeated) A. Yes, sir; yes, sir.

THE VICE CHANCELLOR: Now, under the case of Meyers vs. Weger, decided in the Court of Appeals in 1898, contained in 62 N. J. Law, at pages 440, 441, I shall permit this witness to use his memoranda, made at or near the time of the events recorded, not merely to refresh his memory, but also supplement his memory by the details that are preserved in the memoranda. I shall, therefore, overrule the objection, and permit the witness to answer the question.

MR. CAREY: I want to make the further objection that the witness has not as yet shown that these entries were made at or about the time when they bear date.

THE VICE CHANCELLOR: I shall sustain that objection. He has not done so.

MR. LANE: Well, I do not like to put my recollection against your Honor's—

THE VICE CHANCELLOR: No, two minutes ago you repeated exactly what he testified to. He testified that those entries were made between certain dates which he gave.

Q. With respect to the time of the payments, Mr. Hogencamp, and the time of the receipt of the moneys, when were these entries made? A. Between the first entry and the last entry.

Q. Well, with respect to their dates?

THE VICE CHANCELLOR: With respect to each item, when was it made?

A. I do not recollect now.

Q. Well, was it a year after, or two years after, or when? A. Why, I say between those dates; those entries were made between the first entry and the last entry, those entries were made on there.

Q. Well, what do you mean by that? A. Between August, 1901, and November, 1901.

Q. Now, could you have made them all on August 17, 1901? Is it possible that you could have made them all on August 17, 1901? A. No, sir.

Q. That is between those dates? A. No, between August 16th and November 25th.

Q. Is not August 17th between August 16th and November 25th? A. Yes, sir.

Q. Then, under your answer, it is possible that you made them all on the 17th of August, taking your answer literally? A. Taking it literally; yes, sir.

Q. Did you mean that? A. No.

Q. Well now Mr. Lane wants to know what you meant by that. A. I mean that some time between August 16th, 1901, and November 25, 1901, those entries were made in that book.

By Mr. Lane:

Q. Were they all made at once? A. Yes, sir.

Q. They were made all at once? A. Yes, sir.

Q. The first entry is August 16th? A. Yes, sir.

Q. That was the first money received, was it?

Mr. Carey: I object to the leading of the witness again.

The Vice Chancellor: Yes.

Q. When was the first money received? A. August 16, 1901.

Q. And when was the first payment made?

Mr. Carey: Now, the witness is looking at the memorandum.

The Vice Chancellor: Yes; you are now merely examining him to ascertain when this memorandum was made.

Mr. Lane: Yes, I am doing that.

The Vice Chancellor: All right; in doing that you have not the right to get into the record the substantive fact which the memoranda contains.

Mr. Lane: I am not doing it for that purpose.

THE VICE CHANCELLOR: I cannot help what your purpose is, that is the effect of it. I will not permit you to examine under that head now, because the thing that is in abeyance is whether I will permit this witness to testify to what these items are; and that depends, under the Court of Errors and Appeals ruling, apparently, which I have just referred to, upon when those entries were made; and you are now examining ostensibly to find that out, and I do not think it is proper to permit you, while you are ostensibly trying to find that out, to elicit from the witness what those entries are; and that is what you are doing now; you are trying to get him to say when the first money was received and the first payment made and all that sort of thing.

Q. When was the first entry made in that book on the debit side?

MR. CAREY: That is already in evidence.

THE VICE CHANCELLOR: Yes.

Q. On the credit side, then? I want both sides.

THE VICE CHANCELLOR: I think that is objectionable, but I will permit it.

A. The same date, August 16, 1901.

Q. And the last item on both sides, or on each side? Refer to the book. A. May I refer to it for the date?

THE VICE CHANCELLOR: Yes, I will permit you to refer to the book for the date.

A. (referring to the book) November 25, 1901.

Q. On which side? A. As debiting my account,

myself, with the receipt of moneys.

Q. And what was the last payment? A. (Referring to the book) November 13, 1901.

MR. LANE: I still ask the witness the same question.

THE VICE CHANCELLOR: What?

MR. LANE: To use the book and tell us what those items are.

THE VICE CHANCELLOR: What is the objection?

MR. CAREY: The objection is that the witness has testified now merely in substance this,—that those entries were made between the first entry as it appears on the account and the last entry as it appears on the account, and that they were all made at one time.

THE VICE CHANCELLOR: And he has not said when that was.

MR. CAREY: That is it.

THE VICE CHANCELLOR: That is true; that is a correct summation of his testimony. Under that testimony it is impossible that they could have been made at any other time than the 25th of November, 1901.

MR. LANE: I submit that even if they were made then—

THE VICE CHANCELLOR: Well, I was not assuming it. Under that testimony they could not have been made at any other time, if that testimony is true.

MR. LANE: Well, assuming that to have been proved, that they were all made on the 25th of November, 1901, still there is

no rule of law which forbids the witness to refer to them. There is nothing that requires the memorandum to be made at the time the transaction took place.

THE VICE CHANCELLOR: "At or near the time" the Court of Errors and Appeals says.

MR. LANE: Well, "at or near the time," the rule is that it must be made at a time when it is to be presumed that the witness had a full recollection of what took place. Now these items were made just before the Trustee Account of Mr. Hogencamp was opened, as it appears in the evidence, and while Mr. Hogencamp was carrying Denton's account in his personal account, and at the end of that time he gives credit for certain items received by him, and credits himself with certain disbursements made, all within a period of three months. And the witness testified that at the time he made this memorandum the memorandum was correct, and he did have a knowledge as to what the payments were. Now, I think that falls within the rule, unless they show that there is some reason why he did not, two or three months after this transaction took place, remember the details of the transaction.

MR. CAREY: It seems to me that the mere statements of the witness that at the time he made it he remembered it is not sufficient; that the Court must have some judgment upon the question of the extent of time in which it would be fair for the witness to have made the memorandum after the occurrence, and yet make it per-

missible for the witness to use the memorandum.

THE VICE CHANCELLOR: I understand this witness's testimony is to this effect: That between November 16, 1901, and November 25, 1901, he received various moneys which belonged to Henry M. Denton, and made various dispositions of those moneys on account of them, and that at the end of that period, on the 25th of November, 1901, while the details were presumably fresh in his mind as to where the money came from and where it went, he made up this memorandum; and I understand that whether or not I shall permit him to answer the question as to what money he received on account of Denton, and what he did with that money, by referring as he testified to this memorandum, is a matter resting in sound judicial discretion. In view of that, and in my view of what sound judicial discretion requires in this instance, I propose to overrule the objection and to permit the witness to testify as to what moneys he received on Denton's account during that period; where he received it from; whom he paid it to; and for what purpose, over your objection, Mr. Carey, so that you will have the benefit of it.

MR. CAREY: May I cross examine the witness as to the time when these memoranda were made?

THE VICE CHANCELLOR: Yes, you may; because I am basing my ruling upon the present state of the proofs as to when the memoranda were made.

By Mr. Carey:

Q. You have stated, have you not, that this memorandum was all made at one time? A. Yes, sir.

Q. Now, you state that it was made between the beginning and the end of the period covered by the memorandum? A. Yes, sir.

Q. And inasmuch as there is an entry under date of November 25, 1901, you say that the memorandum was made on the 25th of November, 1901? A. Yes, sir.

Q. Now, if you had not looked at this book and seen that the last date was November 25th, you would not have had any idea when you made up the account, would you? A. I don't know, no, I don't imagine so. That refreshed my memory.

Q. Now, after having looked at the book, how does it refresh your memory that on the 25th day of November you made up this account? A. I had paid out for Mr. Denton the amount of that last entry here—I do not recollect it now—twenty nine hundred and some odd dollars more money than I had received, and I made up the account at that time showing that that amount of money was due me.

Q. Why do you say you made it up at that time rather than on the 25th day of December? A. Because I know I did it at that time.

Q. How do you know? A. Because that refreshes my memory, by looking at the date.

Q. That is, by looking at a mere date, November 25th, your memory is refreshed so that you know that on that date you made up the account rather than a few days after that, or ten days after that? A. Yes, sir.

Q. What is there about that date that tells

you that? A. That is the date that the account was closed and I got the money.

Q. Now, how do you know the account was closed on that date? A. I know it was.

Q. How? A That was the date that the money was transferred to that account to close that account up.

Q. Now, how do you know that that was the date that the money was actually transferred to that account? A. Because I do know it.

Q. Well, how do you know it? A. Because I made that check from the other account and deposited it in that account.

Q. But you have not that check before you? A. No, sir.

Q. You would need that check to determine whether or not the account was closed on that date, wouldn't you? A. I had it before me at that time; I had it before me at that date.

Q. Wasn't it on the 25th day of November, 1901, that you had that check before you? A. No, sir.

Q. How do you know it was not? If that check were produced here to-day, and it bore date not of the 25th day of November, but the 15th day of November, you would then say that this account was made up on the 15th day of November, woudn't you? A. Well, I don't think I would.

Q. What? A. My recollection is—I am positive on that—that my recollection is that that was done at that time—at that particular date.

Q. If that check which you say closed the account were produced here to-day, and it bore date the 15th day of November, 1901, instead of the 25th day of November, 1901, you would say that that account was made up on the 15th day of No-

vember, 1901, instead of the 25th day of Novembrr, 1901, wouldn't you? A. I do not think I would now.

Q. You would not if you had the check which closed the account, and it was dated on the 15th day of November? A. I would like to see the check before I would make any such admission as that.

Q. In other words, you would have to see the check before you could know when this account was made up, wouldn't you? A. I did see the check.

Q. You don't now. Before you could state when the account was made up you would have to have the check before you which closed the account wouldn't you? A. No, I recollect the transaction distinctly, independent of any entry there.

Q. But you do not recollect the date, do you? A. Only as that refreshes my memory.

Q. And in order to make sure of the date, you would have to have the check, wouldn't you? A. Well, possibly.

Q. Suppose that check which closed that account were produced to you and it were found to be dated the 25th day of December instead of the 25th day of November, then wouldn't you say this account was made up on the 25th day of December? A. After looking at the check, and if it refreshed my memory in any way, I would be perfectly willing to say that that was so.

Q. Well, wouldn't you have to say it was so you had the check which closes the account? A. If it refreshed my memory; yes, sir.

THE VICE CHANCELLOR: Is that all, Mr. Carey.

MR. CAREY: That is all.

THE VICE CHANCELLOR: I will adhere to my ruling.

BY MR. LANE:

Q. Using the book to supplement your memory, please tell us what moneys you received on Denton's account, and when you received them, where you received them from, whom you paid them to, and for what purpose, and when. A. 1901, August 15, I received cash $3,783.33. August 23rd, I received cash, $6,000. September 21st, I received cash, $120.89. September 21st, I received cash, $155.39. November 25th I received $2,991.38. Total receipts, $13,050.99.

Q. Now, what are the payments? A. 1901, August 16, W. H. Redfield, Interest to May 1, DeForrest Brothers, $577.45. August 16, Bowers & Sand, ditto to September 1, $275. August 20, Met. Life, Interest to September 1st, $409.63. August 21, Bank, July 12. Second National Bank interest to July 12, $24.65. August 22nd, F. N. Rose, judgment, $3,448.29 August 23rd, W. Hogencamp, note and interest, $1,674.88. August 23rd G. R. Brewster, Mt. Vernon, interest, July 1st, $875. August 23rd, Bond and Mortgage Co. Interest, July 1st, $337.50.

BY THE VICE CHANCELLOR:

Q. It says here (referring to the itemized account in the book to which the witness referred) "Bond & Mort. Co.,— and that is all it says here—do you remember anything more about that item what bond and mortgage company that was, or anything else? A. No, sir; except I think it was a bond and mortgage Company over in New York that had a mortgage on some property.

Q. Go ahead with the next item. A. August 26th W. H. Redfield, Stroh & H. (That is Stroh

and Huber, they were builders) $1,000. August 30th, H. M. Denton, $247.50.

Q. Is there no explanation of that? A. No, sir.

Q. Go, on. A. September 5, T. O'Callahan $150.

Q. No explanation there? A. No, sir.

Q. Go on. A. September 17, H. M. Denton, Watchman, $21. September 17, do. (That is, Denton) Stamps, etc. $87.32. September 18, do. (H. M. Denton) H. B. Brill, $200.

Q. Do you know what that was for, do you know anything about it? A. Brill kept a hardware store here.

Q. All right, go on. A. September 27, T. O'Callahan, recording, etc. $53.88. October 10, H. M. Denton, Metropolitan Life, $320.

Q. It does not say about when that pays interest to or anything A. Yes, Sir.

Q. Go on. A. October 18, do. (That is, H. M. Denton) Various items, $105.

Q. It does not say what that is for? A. No, sir.

Q. Do you know? A. I think it was interest.

Q. But you don't know? A. I don't know, I think it is interest.

Q. Go on. "Oct. 21, do. (Under H. M. Denton) "Taxes 124th St., $1,013.89" "October 29, do" (under H. M. Denton) "A/c Shaw note, $250." "Nov. 1, do." (under H. M. Denton) "Lex. Av. Int." (it meant Lexington Avenue) "$1,012.50" "Nov. 13, do." (Under H. M. Denton) "119th St., $967.50." Total "$13.650.99."

By Mr. Lane:

Q. Now, Mr. Hogencamp, let me refer you to Exhibit 11, T., which appears to be a check to

Thomas O'Callaghan, Jr., for $150., and I draw your attention to the word "Account H. M. Denton" on it, and ask you when, if you know, those words were put on it with respect to the day of the date of the check? A. I think they were put on at the time.

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

Q. Now, Mr. Hogencamp, will you turn to your account as Trustee, and show us the withdrawal of the $2,991.38, if you can?

MR. CAREY: I object to the witness testifying from the book. The check is the best evidence of the withdrawal.

THE VICE CHANCELLOR: I overrule the objection. These books have been used by both sides in their examination and cross-examination, until it will be a miscarriage of justice now to rule out a reference to these books to get items. For the many hours that Mr. Vredenburgh cross examined this gentlemen he must have asked him a thousand questions that only could be answered by reference to these books, and it is only fair that the other side should have the same opportunity. We all have assumed that the Bank's books carried the information that is essential in this case; and Mr. Vredenburgh freely avails himself of them, and I am going to permit the other side to go into them likewise.

A. On Ledger No. 17, A. to L., page 688 (pointing to item under date of November 26, 1901, on the debit side, reading "$2,991.38".

Q. That is the date it went through your Trustee Account, was it not? A. Yes, sir.

Q. Now, will you turn to your account and

show us the deposit of eighty three thousand and some odd dollars which was testified to here by you yesterday?

THE VICE CHANCELLOR: Do you mean when he sold his stock?

MR. LANE: No, this eighty thousand dollars which Mr. Vredenburgh asked him about yesterday, about some mortgage in New York. I want to trace that now.

THE VICE CHANCELLOR: Oh, yes. All right.

A. (Individual ledger No. 19, A. to L. shown the witness, and he indicates on page 790, under an account headed "W. M. Hogencamp, rent account, an item on the credit side of the said account, as follows "May 2, 1905, $83,534.")

Q. The moneys that went into that account, Mr. Hogencamp, were whose moneys? A. Denton's.

Q. And they were paid out for whose benefit? A. Mr. Denton's.

Q. Did Mr. Denton know that such an account was being carried? A. Yes, sir.

Q. How did it come that you carried such an account? A. Well, I wanted to keep the transactions separate so I could refer to them, and I did not want to mix it in my own personal account, and I did not want it in his account.

BY THE VICE CHANCELLOR:

Q. That is not an answer to the question. How did you come to have anything to do with it? That is what Mr. Lane wants to know. How did you come to have those moneys? A. Keeping them separate from my own moneys.

Q. How did you get your hands on them; how did you get $83,534. belonging to Mr. Denton in

your hands at all? That is what Mr. Lane is trying to find out,—how you came to have such an account? A. Why, that money was turned over to me by Mr. Denton.

Q. Oh, but why didn't he turn it over to Smith, Jones or Robinson instead of you? A. Well, nearly all items went into my account, or went into the different accounts here, to keep them separate from Denton's own personal affairs, outside of his real estate matters.

BY MR. LANE:

Q. Did you have any conversation with Denton with respect to this particular Rent Account? A. Yes.

Q. Was there a talk as to why that rent account should be started? A. Yes.

Q. Now, can you remember what the reason was for the starting of that account which was called a "Rent Account,"—that is the conversation between you and Denton? A. I cannot give you any conversation, no definite conversation.

Q. Have you a bank book of that account here?

THE VICE CHANCELLOR: Do you mean a pass book?

MR. LANE: I mean a pass book.

THE VICE CHANCELLOR: (To the witness) Have you the bank pass book of that account here?

A. Yes, sir. (Producing pass book).

Q. Has that account, Mr. Hogencamp, been balanced by the Bank?

MR. CAREY: The book will show whether it has been balanced.

Q. Well, look at the book and tell us whether it has been balanced or not, I mean the pass book. A. It appears in this book as balanced June 7, 1906. There is a balance of $30.84 to the credit of the account.

Q. Did Mr. Denton draw on that account himself? A. Yes, sir.

Q. Have you any checks here signed by him, drawn on that account? A. I have them here.

Q. You have them? A. Yes, sir (Producing a package of checks which he hands to examining counsel).

Q. I show you check dated February 1, 1904, to the Estate of Philip Dater, and ask you whether that is Henry M. Denton's signature? A. Yes, sir; that is Henry M. Denton's signature.

MR. VREDENBURGH: I object to that question, may it please you Honor.

THE VICE CHANCELLOR: As to whether it is his signature?

MR. VREDENBURGH: I object to the course of this examination.

THE VICE CHANCELLOR: I will overrule that objection. He merely asked him whether a certain handwriting is that of Henry M. Denton's. He has a right to identify the paper itself preliminary to offering it. I will hear your objection before it can do you any harm; but it cannot do you any harm to have this witness testify that a certain paper is in the handwriting of Mr. Denton, and it may do Mr. Lane grave harm not to let him lay the groundwork for an offer.

MR. VREDENBURGH: I withdraw the objection.

Q. I show you a number of checks, 17, in all, and ask you whose handwriting the signature to each of those checks is. A. 18, I make it. Those signatures are in the handwriting of Henry H. Denton.

Q. Will you tell me what account they were paid out of?

MR. VREDENBURGH: I object. This would seem to me to be a most unfair proceeding. This gentleman has the check stubs that tell all of the items, and tell why those checks were drawn. He has Mr. Denton's check stubs that tell why they were drawn; and that he should be permitted now to take up these checks, in a Court of Justice and testify to what he thinks they are—

THE VICE CHANCELLOR: Cannot you get all those things by a subpoena duces tecum? Cannot you get all those papers that are in his possession by service of a subpoena duces tecum, requiring him to bring them all here.

MR. VREDENBURGH: We can only get those that he is willing to bring here.

THE VICE CHANCELLOR: Until it appears that he is unwilling, how can you make that objection? He now produces certain papers signed by your client, Mr. Denton, and Mr. Lane now asks him what account those checks signed by Mr. Denton were taken out of in the Bank, and you say that is not relevant,—you do not say that it is not material—but you say because it appears, or may be made to appear that this gentleman has the check book from which these checks were torn, or something else, that I should not permit a

perfect relevant piece of testimony to come in. I cannot accede to that. I will overrule that objection.

Question repeated.

THE VICE CHANCELLOR: By the Bank, he means.

A. The Rent Account.

THE VICE CHANCELLOR: No, that is not the title of the account.

A. "W. Hagencamp, Rent Account."

MR. LANE: I offer these eighteen checks in evidence.

THE VICE CHANCELLOR: I will hear counsel. Is there any objection.

MR. VREDENBURGH: I suppose we can see them first.

THE VICE CHANCELLOR: Certainly. (The 18 checks were thereupon handed to Mr. Vredenburgh for his inspection).

THE VICE CHANCELLOR: Do you want to cross examine before any ruling on the offer, Mr. Carey.

MR. CAREY: I will ask him one or two questions.

BY MR. CAREY:

Q. Mr. Hogencamp, you say that these were paid out of Rent Account. How do you know that? A. I know they were, by reference to the ledger, by reference to the pass book, and by my recollection of the transaction.

Q. There is nothing on the checks which indicate that they were paid out of Rent Account, is there? A. Some of them.

Q. Which ones? A. There is one. (Calling at-

tention to a check dated April 28, 1905, "Pay to the order of W. Hogencamp, $1,005," and then "One thousand dollars" when it comes to be written out, and then "$1,005" again in figures; signed "Henry M. Denton"; and in pencil, on the side of the check appears the following "W. H. Rent A/c."

Q. Now, the question is in whose handwriting is the pencil memorandum? A. Mine.

Q. When was it put there? A. At the time.

Q. When do you mean by "At the time? A. At the time the check was given.

BY THE VICE CHANCELLOR:

Q. At the time Mr. Denton gave the check did you take a pencil and put that on there, is that what you mean? A. Yes, sir.

Q. But there is nothing on the check, as Denton wrote it, that shows that it was to come out of the rent Account? A. No sir.

Q. Is there anything on any of these checks, as Denton wrote them, to show that it was to come out of the Rent Account? A. No, sir.

BY MR. CAREY:

Q. Then all of the memoranda which appears on any of these checks, indicating the account out of which they are to be paid, are memoranda in your handwriting? A. Yes, sir.

Q. And all these checks came to you from Mr. Denton, did they? A. Yes, sir.

Q. And passed through your hands? A. Well, I won't say that. For instance, there is a check (referring to one of the 18 inquired about) to the order of Collector of Assessments and Arrears, dated June 5, 1905, for $2,513.30—that check was given to Edward A. Slattery, Collector of Assess-

ments and Arrears, according to the endorsement, and came to the Bank, and that may have been the first time I saw it; or I may have seen it before; I do not recollect.

By The Vice Chancellor:

Q. Then you are not prepared to say that before the payees of those checks got them from Mr. Denton they all first went through your hands,— is that the gist of your answer? A. Yes sir.

Q. But I do understand you to say that before the money on them was paid, as against Denton, they came to your knowledge, and you told them, in some way or other, where to charge them; is that what you mean? A. Yes, sir.

By Mr. Carey:

Q. Then what is there that makes you certain that this check to the Collector of Assessments, concerning which you have testified, was paid out of Rent Account? A. Merely the entry on the ledger.

By the Vice Chancellor:

Q. And, I suppose, in the pass book. A. And in the pass book.

By Mr. Carey:

Q. Will you point to the entry in the ledger and on the pass book which you say indicates that that check was paid out of "W. Hogencamp Rent Account"? A. (After examining the ledger and the pass book) I do not find it. I cannot find it at present.

By the Vice Chancellor:

Q. Well, is it not quite obvious that it is not there? He has asked you where that check, not some other check, appeared, as an item either in

the individual ledger or in the pass book; now I have asked you if it is not quite obvious that it does not appear, is not that so? A. It does not appear here now.

BY MR. CAREY:

Q. You say "it does not appear here *now*"? A. Yes, sir.

THE VICE CHANCELLOR: That means in the individual ledger, No. 18, A to L, W. Hogencamp Rent Account, or in the Bank pass book of the same account. Now I will call attention to the fact, for the purpose of keeping the minutes straight on this matter, that under date of November 16, 1905, in the individual ledger No. 19, there is an item "$2,513.30" which is the same amount as the check about which M. Carey has been questioning. Of course there is no way to know whether they have any connection or not; but I simply put that on the minutes so we may have it there in case some other proofs come in about it.

BY THE VICE CHANCELLOR:

Q. Have you checked up all of those checks that you have identified as having been signed by Mr. Denton and drawn out of this account, against the pass book and ledger, to see whether they were charged against this Rent Account? A. No, sir.

Q. Then how can you testify what account they were taken from if you have not checked them up to see? A. Well, they were made up by the bookkeeper of the Bank, and I took it for granted that they were correct.

Q. (Question repeated) What is your answer to that? You see here are 18 checks drawn by

Mr. Denton, and Mr. Lane has asked you out of what account they came; and, presumably, your answer is going to be that it was out of this account; and Mr. Carey is cross examining to see whether you should be permitted to answer that question. I ask you whether or not you had them checked up to find out what account they came out of? Have you looked at the pass book and ledgers? A. I think I have; I am pretty sure I have.

MR. CAREY: I thought the thing pending before the Court was the offer of these check in evidence, not the question of Mr. Lane to the witness "Were these checks paid out of this Rent Account?"

THE VICE CHANCELLOR: You think he has already testified that they were?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: Well, I was under that impression too; the mere question now is whether they will be admitted in evidence because this witness has testified that they were taken out of this account, and my question then is how can he testify that they were taken out of this account unless he has checked them up to see whether or not, on the Bank ledger and pass book, they did take them out. (To the witness) How can you do that, Mr. Hogencamp?

A. I think they were all checked off on here.

MR. CAREY: That is not an answer to your Honor's question.

THE VICE CHANCELLOR: Yes, by "on here" he is looking at the pass book of this account, and he says they are all checked off on there.

THE WITNESS: Yes they were checked off, and I testify that that is my check mark, now that I look at it.

BY MR. CAREY:

Q. Have you compared these 18 checks with either the ledger or the pass book, so that you are able to testify that all of those were paid out of this W. Hogencamp Rent Account? A. Yes, sir.

Q. When did you do it? A. Oh, I don't know; I couldn't tell you.

Q. Did you do it within one year? A. I think it was previous to the—well, about the time of the last of the other cases.

BY THE VICE CHANCELLOR:

Q. The Richards vs. Shaw case? A. Yes, sir; I think it was since then or about that time.

BY MR. CAREY:

Q. Did you do it? A. Yes, sir.

Q. And in whose possession have those 18 checks been since that time. A. think Mr. Lane had them.

Q. And do you know that these are the identical checks which you at that time checked up with the W. Hogencamp Rent Account on the ledger and in your pass book? A. I think they are.

Q. Do you know they are? A. I am satisfied they are; yes, sir.

Q. Why are you satisfied that they are? A. Well, I had them at the time the checking was made; they have been in Mr. Lane's possession ever since, and I do not suppose he would do anything with them out of the way.

Q. And you have simply, to-day, looked at the

signatures to see whether they have all been signed by Mr. Denton, is not that so? A. Yes, sir.

Q. And for aught you know, these checks which are now presented, 18 in number, might be some other checks signed by Mr. Denton instead of the ones you checked up with the accounts at the close of the Richards-Shaw trial? A. I cannot conceive of a thing like that.

Q. Now, Mr. Hogencamp, these checks were taken from a check book which has a stub or stubs for the entry of the items which the check pays, have then not? A. I imagine so.

Q. And you have those check books, with the stub checks in them, in your possession, have you not? A. I had some of them; I don't know how many I had.

Q. So far as you know now, you have them all, haven't you? A. No.

By The Vice Chancellor:

Q. You now have all that Mr. Denton ever gave you, haven't you? A. All that Mr. Denton ever gave me.

The Vice Chancellor: What he meant was that he does not know whether that is all that Mr. Denton had between those years, or not; but Mr. Denton says that it was all. He now says he has in his possession all that he ever had of Mr. Denton's.

Q. Have you examined those stub checks recently? A. No, sir.

Q. How recenty have you examined them? A. Well, I imagine not in a year, certainly.

Q. Have you, within three years? A. I could not tell you. I have no recollection about how

long it was. I know I have not seen them within a year, I know that.

Q. As a matter of fact, you have not examined them within two years, have you? A. Possibly not.

Q. Nor within three years? A. I could not tell you. My recollection as to dates was rather uncertain at this stage.

MR. CAREY: If your Honor please, in view of the cross examination, I object to the admission of those checks in evidence at the present time. The witness is evidently not clear that these checks were paid out of the Rent Account, and he is unable to show us, from any of the records which he has here, that they were so paid; and it appears, further, that what examination he made of them to ascertain the account out of which they were paid was made more than a year ago.

THE VICE CHANCELLOR: I shall rule these checks out until it is shown that, on the books of the Bank, the sums represented by these checks were taken out of this W. Hogencamp Rent Account.

BY MR. LANE:

Q. Will you kindly take the books of the Bank, and take these checks, one by one, and refer to them, and see if they were paid out of the Rent Account? A. Check dated January 19, 1904, for $1,536.50 (now marked A 1) to the Collector of Assessments and Arrears, was paid out by the Bank under date of January 25, 1904.

BY THE VICE CHANCELLOR:

Q. You find that in the pass book, do you? A.

Yes, sir. A 2 is a check to the Estate of Philip Dater for $562.50, dated February 1st, 1904; paid February 20th, 1904. I find that in the pass book. Check A 3 is to Bower & Sand for $709.51, dated February 23rd, 1904. It was paid April 29th, 1904 and appears in the pass book.

By Mr. Carey:

Q. In whose handwriting are these figures "709.51" to which you have just referred in the pass-book? A. They are mine.

Q. And put there when? A. I do not recollect; at the time that this book was checked off.

Q. And that was at the end of the Richards-Shaw suit? A. I do not recollect now when it was.

Q. You testified a little while ago that you did this about the close of the Richards-Shaw case; is that the time you refer to? A. I testified, as I recollect, that it was a year ago or more than a year ago; I do not recollect when, now.

Q. Now, whatever that time was, that was the time when you put these figures "709.51", to which you have just referred, there? A. That is the time when I examined the account.

Q. And put the figures there? A. And put the figures there; because the items were in bulk.

By The Vice Chancellor:

Q. Where did you get these figures from, did you get them out of the Individual Ledger of the Bank? A. From the checks themselves.

By Mr. Lane:

Q. When you had this book balanced, were there returned to you by the Bank certain checks? A. Yes, sir.

Q. Where are the checks that were returned to you by the Bank? A. They are here.

Q. Are these they? A. Yes, sir. (Referring to the 18 checks in question.)

BY THE VICE CHANCELLOR:

Q. I understand this witness to testify that this pass book which he is now looking at was made up by him about a year or so ago; is that right? A. It was checked off by me. It was made up by the bookkeeper.

Q. About a year or so ago? A. I do not recollect how long ago; but it was made up by the bookkeeper of the Bank and given to me along with the checks, and I checked it off here, and when I came to the item of the account of $1,944.91 and did not find a check for that amount, then I looked to see what checks we had, and I found these three items here which made up that sum.

Q. And therefore you assumed that that sum was made up of those three items? A. Yes, sir.

Q. But you did not find that in any book of the Bank? A. No, sir; I suppose I could have found it, if I had gone back to the check list.

Q. But you just assumed that those items that made exactly that amount were the three items that were lumped into that account? A. Yes, sir.

Q. And you did that whenever that appears in this book that you are now referring to? A. Yes, sir.

MR. CAREY: I did not understand this was a pass book, made up a year or so ago; I thought it was a pass book that was made up at the time when the transactions were going on. Now I understand this was a

pass book that was compiled by some clerk of the Bank at the request of Mr. Hogencamp, or somebody else, by Mr. Lane perhaps.

MR. LANE: No, I deny it.

MR. CAREY: Well, at the request of someone; and we are having this witness testify to the payment of these checks out of a compilation of that character.

THE VICE CHANCELLOR: Well, what do you want to do about it.

MR. CAREY: I object to his making use of it.

THE VICE CHANCELLOR: I am inclined to sustain that objection. It forces us back to the individual ledger again.

MR. CAREY: Well, I did not understand your Honor, that that (referring to the pass book) was a recent compilation.

BY MR. LANE:

Q. When, Mr. Hogencamp, did you put on the checks the word "Rent Account" in pencil? A. When they came there to the Bank for payment.

BY THE VICE CHANCELLOR:

Q. So that the bookkeeper would know what account to charge them against? A. Yes, sir.

Q. That is what you testified to half an hour ago? A. Yes, sir.

BY MR. CAREY:

Q. As a matter of fact did you not put those words on there at the time when you made up this pass book that you have just been consulting.

THE VICE CHANCELLOR: He has always said that he did not make that pass book up.

Q. Well, when you checked up this pass book and put in those small figures here—didn't you put the pencil memorandum on these various checks at that time? A. No, sir.

By Mr. Lane:

Q. Won't you please turn to the original sources of information in the books of the Bank, and from them testify as to whether or not various checks were taken out of the Rent Account, and, if so, where they appear in such original sources? A. I now turn to Individual Ledger A. to L, No. 18, page 798, account headed "Wm. Hogencamp, Rent Account," and taking up the checks heretofore shown me, signed by Denton, I find as follows: the first check, A 1, January 19, 1904, to the order of the Collector of Assessments and Arrears $1,536.50, appears under the date of January 25, 1904, charged to my Rent Account $1,536.50. A, 2, dated February 1st, 1904, to the order of the Estate of Philip Dater, $562.50, I find charged against this account under date of February 20, 1904, in the same account. A, 3, February 23, 1904, to the order of Bower & Sand, $709.51,—I find charged to this account on April 28, 1904. $1,944.91, which I think, included that item of $709.51, and some others. A, 4, is dated February 24, 1904, to the order of Joseph M. Williams, $30. I think that was part of the April 28th transaction, that that $30. was part of that $1,944.91. Of course if I can refer to this book (indicating the pass book produced by the witness) I can perhaps bring it to my recollection.

The Vice Chancellor: Well, refer to that as refreshing your memory as to what the transaction was.

The Witness: To save time here, if

there is any question about it, I can refer to the Dealers Check List of that date, and that will show what the transaction was.

(The Dealers Check List for April 28, 1904, A to L, is shown witness).

MR. LANE: Would it not be better if, at recess these checks, numbered A 1 to A 17 inclusive, which have been identified by this witness as coming out of this account, were taken by him and traced on the books of the Bank in such a way that he can make out a list and tell us then where they appear, and thus save a great deal of time?

THE VICE CHANCELLOR: I think that is a very good suggestion; so we will suspend this examination on this point until after that can be done.

BY MR. LANE:

Q. Let me ask you whether Mr. Denton had any account in the Bank during the time these checks (A, 1 to A, 17, inclusive), covered, other than what you call the Rent Account? A. I find, his name, "Henry M. Denton" mentioned on page 400 of this Individual Ledger, A to L, No. 18.

Q. Showing what? A. Showing the account closed.

Q. When? A. February 17, 1903.

Q. Now, is there any other account in that ledger of Henry M. Denton? A. (After examining the Ledger). I do not see any, I do not find any.

BY THE VICE CHANCELLOR:

Q. I hand you a check, Exhibit 5, signed by Henry M. Denton, drawn on the Second National Bank, dated March, 14, 1903, which you have said

came out of the account of Henry M. Denton; How is that possible if he did not have any account in the Bank at that time, and it was closed previously? A. It came out of Henry M. Denton, in my name, as Attorney Account.

BY MR. LANE:

Q. Were you carrying at that time for Henry M. Denton, an account known as "Attorney Account"?

THE VICE CHANCELLOR: "Henry M. Denton, Attorney"?

MR. LANE: "William Hogencamp, Attorney".

MR. CAREY: I object to that as leading.

Question overruled.

Q. Were you carrying an account in the Bank under the name of "William Hogencamp, Attorney"? A. Yes, sir.

Q. For whom? A. Henry M. Denton.

Q. Will you turn to the account? A. Yes, sir.

Q. Where is it? A. Page 797 of Individual Ledger 18, A to L (Turning to the page indicated).

Q. Now I show you this check, Exhibit C, 5, and ask you from what account in the Bank that was paid, if you know. A. William Hogencamp, Attorney.

Q. And will you turn to the Individual Ledger and show the item? A. Yes, sir.

Q. The word "Attorney"—who wrote that there on the face of the check in pencil? A. I did.

Q. When? A. At the time the check was drawn..

By The Vice Chancellor:

Q. This check, in form, is on the blank of the Second National Bank, and is drawn to the order of Interest Account, and is signed "Henry M. Denton" is it not? A. Yes, sir.

Q. And is for $807.82? A. Yes.

Q. And you now say that was, by the Bank, charged up against the account of Wiliam Hogencamp, Attorney? A. Yes, sir.

By Mr. Lane:

Q. Why was this word "Attorney" put there by you? A. To direct where it was to go to.

By The Vice Chancellor:

Q. To direct the bookkeeper the account to charge it against? A. Yes, sir.

Q. Then Mr. Denton did have an account, practically, in the Bank at the time that these other checks were drawn, didn't he? A. Well, that is—

Q. If he could draw on an account that they could charge properly against "Wm. Hogencamp, Attorney" then he did have an account in the Bank at the time these other checks were drawn, did he not? A. Yes, sir; that is so.

By Mr. Lane:

Q. Was that account closed? A. Yes, sir.

Q. When? A. January 5th, 1904.

Q. Was that account running at the time that the Rent Account was running? A. It ran from January 19, 1903 to January 1904.

Q. And is that the only time that it was running? A. I don't know; I do not recollect now.

Q. Will you look at the books of the Bank and find out whether Mr. Denton had any account in the Bank between the 19th day of January, 1904

and the 28th day of February, 1905, either "Wm. Hogencamp" or "Wm. Hogencamp, Trustee" or "Henry M. Denton" or under any other name? A. (Referring to Ledger 18) I cannot see it here. If there is, it must be in a subsequent Ledger.

Q. Well, what subsequent Ledger do you want? A. No. 19. I guess that is open right here in front of me. (After examining Ledger 19) I do not find any entry of any Denton account on this Ledger. Whatever account he had was only his interest in these other accounts.

Q. Which accounts were open between January 19, 1904, and April, 1905? A. The Rent Account.

Q. Is that the only one? A. Yes, sir; that appears to be the only one.

MR. CAREY: Wouldn't it be a good idea for us to have the beginning and ending of these different accounts which have been mentioned?

THE VICE CHANCELLOR: You may ask for that on cross-examination, if you want to.

MR. CAREY: I thought perhaps it would be a time now to have it copied right on the record.

THE VICE CHANCELLOR: I cannot compel Mr. Lane to do that.

Q. There was some talk yesterday about the 68th Street property, Mr. Hogancamp; was that property, after the foreclosure proceedings, sold? A. Yes, sir.

Q. And was it sold in one parcel or in separate parcels?

THE VICE CHANCELLOR: He testified yes-

terday that it was sold in four parcels, didn't he?

MR. LANE: That was the one in which the foreclosure sale was in four parcels; I am asking about the subsequent sale, it was sold afterwards.

BY THE VICE CHANCELLOR:

Q. Now he wants to know whether, when it was sold and you got the money, it was sold all in one parcel, or whether it was sold in separate parcels? A. I think it was sold in one parcel.

Q. And how much money did you receive? Have you a memorandum that you found in respect to that? A. I think so.

Q. Find it. A. Yes, sir; I have the memorandum. (Producing memorandum).

Q. Is that the memorandum that was used yesterday, marked J. B. V., 2? A. Yes, sir.

Q. When was that memorandum made? A. About the time of the sale, or shortly afterwards.

THE VICE CHANCELLOR: That has been admitted in evidence.

Q. You got from that $15,040.81, according to your testimony? A. Yes, sir.

Q. Will you show that in your account?

THE VICE CHANCELLOR: All that memorandum was dictated on the minutes yesterday.

MR. LANE: That is right.

Q. Now, show it in your account. A. (The witness turns to Ledger No. 18, A to L, page 798),

Q. Point to the item? A. (The witness points to an item credited to Wm. Hogencamp, Rent

Account, April 28, $15,040.81, with a pencil memorandum on the inside of "68th St." (or which the witness says looks like "68th St. & West End").

Q. In whose handwriting is that pencil memorandum? A. I do not know, sir.

Q. Is it in yours? A. I think not; it may be; I do not remember.

Q. Do you say you do not remember whether you made that memorandum, or not, that pencil memorandum? A. I may, and yet I am not positive about it.

THE VICE CHANCELLOR: Why waste any time over it? Mr Vredenburgh brought all this out yesterday. The witness said he got $15,040.81, and paid Shotwell $11,266, and retained for himself $3,774.81. It all went in the evidence, and the memorandum was dictated in the minutes.

MR. LANE: He did not bring out the important fact, which was that it went through the Rent Account.

THE VICE CHANCELLOR: Well, the witness has testified to that now. What more do you want?

MR. LANE: I do not want anything more, if, it is admitted that it went through the Rent Account.

THE VICE CHANCELLOR: All right.

BY THE VICE CHANCELLOR:

Q. On this Exhibit J, B, V. 2 1 I notice that one item reads "Retained, "$500",—what does that mean? A. I do not recollect now, sir.

Q. Well, does that mean that you retained it? A. No, sir; it was taken out of the gross sum,—

Q. You have not answered what I asked you, I asked you whether you retained it. A. No, sir.

By Mr. Lane:

Q. With respect to the dividends on this stock, —was Mr. Denton paid any dividends? A. Yes, sir.

Q. Con you show that in the account? A. Yes, sir.

Q. Where? A. On the same ledger, No. 18, A. to L., page 798, under the head "Wm. Hogencamp, Rent Account."

Q. Where is it? A. "July 25, 1904, Div. $400;" "July 25, Div. $400"; and "July 25, 1904, $400."

Q. There were three of them? A. Three of them.

Q. Is there any other dividend there that you find, down to the finish of the account? A. Not that I can possibly trace. There is an item of "Jany. 4, 1905, $400."

Q. When was the dividend declared that year, do you know, 1905? A. It would be about the first of January.

By The Vice Chancellor:

Q. That is a pure guess on your part, as to whether it was dividend? Is it not? A. It is a pure guess.

The Vice Chancellor: Then do not let us waste any time on that.

By Mr. Lane:

Q. Now, did Mr. Denton pay any other interest on these mortgages, other than the interest that was paid, as you testified, by the check C, 5.? A. Yes, sir.

Q. Have you got the check there? A. Yes, sir.

Q. Produce it? A. (Witness produces check dated January 4, 1905, "Pay to the order of Interest Account, $1,983.79," signed "Henry M. Denton."

Q. I ask you when the pencil memorandum on the back of that check was made. A. At the time the check was signed, or before the check was signed.

Q. And where was it made? A. Second National Bank.

Q. And who was there when it was made? A. I think Mr. Denton was there when it was made.

Q. Did you have any conversation with him as to what the check was for? A. Yes, sir.

Q. Do you remember what that conversation was? A. It was a check given for $1,983.79,—

Q. (Question repeated). A. Yes.

Q. What was it? A. That it was a check in payment of interest on sundry loans in the Second National Bank.

Q. And were the loans talked about? Yes, sir.

Q. What were the items? A. To pay interest on loans of Shaw, three months' interest on $25,000, $750; the interest on Denton loans, of $452.92; the interest on Redfield loans, $768.87, and the interest on the Hanford loans, of $72, making $1983.79.

By The Vice Chancellor:

Q. That is exactly what the pencil memorandum says on the check, is it? A. Yes, sir.

Q. Who wrote the body of that check? A. I did.

Q. And everything except the signature? A. Yes, sir.

Q. Whose signature is that? A. Henry M. Denton's.

By Mr. Lane:

Q. Who wrote the words "W. Hogencamp, Rent Account" on the face of it? A. I did.

Q. And when was that written? A. At the time.

By The Vice Chancellor:

Q. Mr. Denton, you say, did not have any other account in the Bank at this time out of which these amounts might have come? A. Yes, sir.

Q. You did say that? A. Yes, sir.

Q. And they did come out of "Wm. Hogencamp, Rent Account," did they? A. Yes, sir. (The witness points to an item under date of January 4th, 1905, $1983.79, on page 798 of Individual Ledger No. 18, A to L, "Wm. Hogencamp, Rent Account").

The check just identified by the witness is offered in evidence by Mr. Lane, admitted without objection and marked Exhibit C, 22.

Recess until 2 P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at 2 o'clock, P. M.

WILLIAM HOGENCAMP, recalled.

BY MR. LANE:

Q. I show you, Mr. Hogencamp, three papers, and ask you what they are. A. They are deposit slips deposited in the Second National Bank of Jersey City to Wm. Hogencamp, Rent Account.

Q. They are deposit slips representing deposits of what money—generally, now? A. Moneys to the credit of Wm. Hogencamp, Rent Account.

Q. What particular moneys? A. Dividend.

Q. That is, the three $400 checks that you referred to, the three $400 deposits that you referred to a short time ago? A. Yes, sir.

Q. When was the word "Dividend" written on them? A. On the date the deposit was made out.

Q. Is it in your handwriting? A. Yes, sir.

Q. And is the "Wm. Hogencamp, Rent Account" in your handwriting? A. Yes, sir.

MR. LANE: I offer them in evidence.

The three checks are handed to Mr. Carey for his inspection.

BY MR. CAREY:

Q. Did Mr. Denton ever see these, Mr. Hogencamp? A. I do not know, sir.

BY THE VICE-CHANCELLOR:

Q. Is it likely that he ever saw them? A. Probably not.

MR. CAREY: I object to them as incompetent, and irrelevant to the issues in this

cause, and as not binding upon the defendants.

THE VICE-CHANCELLOR: Let me ask a question or two, so as to get the matter clear in my own mind.

BY THE VICE-CHANCELLOR:

Q. How were dividends paid by the Second National Bank upon its stock? A. By checks.

Q. And those checks were drawn to the persons who, by the books of the corporation, were the record owners of the stock, were they not? A. Yes, sir.

Q. And this stock, of which this was, you say, the dividend at the date when these deposit slips were by you stated to have been prepared, stood in your name, did it not? A. The stock? No, sir.

Q. In whose name did the stock stand? A. Henry M. Denton.

THE VICE-CHANCELLOR: I shall exclude the deposit slips. You understand, of course, the reason of my ruling, Mr. Lane? If the checks were drawn to Mr. Denton's order at that time, then his own endorsement is the only way to show that the dividend went into this account. The dividend checks made out to Mr. Denton should be produced, or their absence accounted for, before you have any right to introduce other evidence concerning them.

BY MR. LANE:

Q. I show you dividend check, dated July 1st, 1904, for $400, drawn to Henry M. Denton; does that bear his endorsement? A. No. sir.

By The Vice-Chancellor:

Q. What year do you understand these deposit slips were for, Mr. Hogencamp? A. Well, it would be the July dividend, and the January and July dividend of the previous year.

Q. I cannot understand that. A. July, 1903, January, 1904 and July, 1904.

Q. Well, why did you make out three slips, if you made one deposit on the same date? A. There were three different items.

Q. Well, is it your custom, when you deposit in the same account three or more different items, to make out a separate deposit slip for each item? A. Sometimes; yes, sir.

Q. What is the purpose in that? Do you mean to say that if you are depositing three checks to an account on the same day, you take three separate deposit slips and make them out? A. Yes, sir.

Q. Now what purpose could possibly be served by that multiplication of labor both for you and the bookkeepers? A. Well, as identifying it, as to what the transaction really was; that it was for three separate dividends.

Q. Well, if you had entered three separate checks on the same deposit slip, would not that identify it just as readily as if you had written one on each of three pieces of paper? A. Possibly it would.

Q. I cannot conceive why you should take three separate deposit slips, and put an item on each one of the respective three, when exactly the same purpose would be served if you took one deposit slip and entered the three separate items on it. A. Probably it would, but that is the way it was done.

Q. Well, I did not ask you that, I asked you what purpose could be served by it. A. No purpose at all, excepting to show there was a credit to Wm. Hogencamp, Rent Account at that time of three different items of $400 each.

Q. How could a check drawn to Henry M. Denton get deposited to the credit of Wm. Hogencamp, Rent Account without an endorsement by Denton?

MR. LANE: Let me offer the three checks first, so as to get them on the record. I offer in evidence the following papers: A check bearing on its face the following: "76th Dividend. No. 21. Jersey City, July 1st, 1903. Second National Bank. Pay to Henry M. Denton or bearer, Four Hundred Dollars, $400. J. G. Hasking, Cashier," with nothing of any sort upon the back thereof. A check marked "77th Dividend. No. 21. Jersey City, January 2nd, 1904. Second National Bank. Pay to Henry M. Denton or bearer, Four Hundred Dollars, $400. J. G. Hasking, Cashier," with nothing upon the back. Check marked "78th Dividend. No. 19. Jersey City, July 1st, 1904. Second National Bank. Pay to Henry M. Denton or bearer, Four Hundred Dollars, $400. J. G. Hasking, Cashier," with nothing upon the back of it.

THE VICE-CHANCELLOR: I note that there are no holes punctured in these checks indicating payment, which other checks of the Bank, which we have had heretofore before us, had. Mr. Carey, what have you to say about the offer of these checks in evidence?

MR. CAREY: I object to them, because there is nothing to show that these checks ever came into the possession of Mr. Denton; nothing to connect either Mr. Denton, or any of these defendants in this cause, with these checks.

THE VICE-CHANCELLOR: That would go to the weight, wouldn't it, rather than to the probative force of the checks? As far as the Bank is concerned, the testimony on the face of these papers is that certain checks were made out to Denton, or bearer, for certain dividends. Now, there is nothing to show that Denton ever knew that, or ever had anything to do with it. It may be that in the determination of the case the trier of fact, myself, will reach the conclusion that the presence or absence of these checks makes no difference as far as Denton is concerned; but I do not know that that should be the test as to whether I should admit them in evidence, or not. This corporation, as far as these checks are concerned, appears to have made out checks to him for the stock dividends on the stock. It may be that they never got to him. But I cannot, therefore, say that they are not admissible in evidence for whatever they are worth. In that view—not deciding by my ruling that they are binding upon Denton as showing that he owned the stock and received the dividends at all—I will admit them. Let them be marked in their order.

(The three checks were thereupon marked Exhibits C, 23, C, 24, and C, 25, respectively.)

BY MR. LANE:

Q. Do you remember whether any of the dividend checks were ever marked with the three holes that have been referred to? A. They were not.

MR. LANE: I offer these deposit slips in evidence to show that that money went to the credit of Wm. Hogencamp, Rent Account.

MR. CAREY: I object to that, because the deposit slips do not show that these checks went to the credit of the Rent Account.

THE VICE CHANCELLOR: They do not show that. In connection with the oral testimony I think they show it, but they do not show it on their face, and that is what you say they did, Mr. Lane.

MR. LANE: No, I offer them, of course, in connection with the oral testimony. I will ask another question.

Q. What do these deposit slips represent? A. Three deposits.

Q. Of what checks? A. Of dividend checks of the Second National Bank of Jersey City, of $400 each.

BY THE VICE CHANCELLOR:

Q. Are they those three that were just identified? A. Yes, sir.

MR. LANE: Now I offer them.

THE VICE CHANCELLOR: Subject to the same objection, I will admit them,—not because it is proven that the matter was brought to Denton's attention, nor that he is bound by what this witness did with respect to those dividends, but because it is

a happening at the time concerning the subject matter of dispute, and may be connected with Denton, and may not. If it is not, it is immaterial and will not hurt anybody; if it is, it is proper that they should have them in. Let those all be marked as one exhibit.

10 The three deposit slips, pinned together, were thereupon marked Exhibit C-26.

BY MR. LANE:

Q. I show you seven checks, all drawn to the Hudson Trust Company, and purporting to be signed by Henry M. Denton, and ask you whose signatures there are on those checks—whose signature it is on each of the checks? A. Henry M. Denton's.

30 Q. And what were those checks for? A. For payments to the Hudson Trust Company.

Q. For what? A. All except the one dated October 29th, 1903, No. 4196, were for interest; the last named check was for $2,000 on account of the principal and $60 for interest.

Q. And out of what account were they paid by the Second National Bank? A. The Wm. Hogencamp, Rent Account.

30 MR. LANE: I offer these checks in evidence.

BY MR. CAREY:

Q. I understand you to say that all of these checks paid interest, except the check for $2,060; is that correct? A. That is my recollection of it; yes, sir.

Q. How do you recollect that? A. Why, I

40 know that there was interest due over there.

Q. And so you reasoned that these must be to pay interest? A. Yes, sir.

Q. It is not a matter of recollection at all, then? A. Well, reason and recollection; yes, sir.

Q. These checks bear pencil memoranda, (except in two instances; where the memoranda are in ink), "Rent %"—in whose handwriting is that? A. Mine.

Q. And do you know when that was put there? A. It was put there when it came into the Bank for payment.

Q. And not before? A. Not as I recollect it; no, sir.

Q. Do you recollect that it was put there then? A. Yes, sir.

Q. State what your recollection is about this one of October 3rd, for example. A. Well, the checks came in from—

Q. Oh, never mind looking at the endorsement.

MR. LANE: He is entitled to look at the whole check.

THE VICE CHANCELLOR: You may look at the whole check, if you wish, and everything that is written on it.

A. Looking at the face of the check, and also at the back of it, I say that that check came from the New York Clearing House to the Second National Bank of Jersey City; and before it was charged up it was submitted to me, and I put that "Rent %" across it.

Q. You remember it, do you? A. Yes, sir.

Q. Who submitted the check to you? A. One of the exchange clerks, I do not know which one.

Q. For what period did that check pay the interest? A. I don't know.

Q. There is another check, dated July 6, 1904, for $201.67 (showing the witness the check re-

ferred to); do you know that that was in payment of interest? A. I am pretty sure it was; yes, sir.

Q. Why are you pretty sure? A. Because, as far as I recollect, the only transaction he ever had over there, except to pay the principal of the indebtedness, was to pay the interest.

Q. And then, because you do not recollect any other transaction of his but that, you say that this was in payment of interest on that loan account? A. Yes, sir.

Q. Now, can you tell us what period that pays interest for? A. I cannot.

Q. The check dated February 27th, 1904, for $200,—do you say that was for interest account? A. Yes, sir; I believe so.

Q. And you answer that you believe so because you do not know of any other transaction that Mr. Denton had with the Hudson Trust Company? A. Except as payments on account of principal, as I said before.

Q. Do you know what period that $200 paid interest for? A. No, sir.

Q. The check dated January 4th (I should say it was 1905), for $150,—did that pay interest? A. Yes, sir.

Q. How do you know? A. For the same reason that I gave before, that I do not know of any other transaction he had over there at the Hudson Trust Company except that.

Q. Up to what time did that pay interest? A. I do not know, sir.

Q. For what period did that pay interest? A. I do not know.

Q. The check dated January 27th, 1905, for $45, —did that go to pay interest? A. I understand so; yes, sir.

Q. You say you "understand so,"—what do you mean by that? A. I believe it did.

Q. Why do you believe it did? A. Because, for the same reason as I said before, that I never knew of his having any other transaction over there except in connection with that loan, either in payment of principal or interest.

Q. And to what time did that pay interest? A. I don't know.

Q. And for what period did it pay interest? A. I do not know.

Q. Of the check dated October 29th, 1903, for $2,060, you say $60 was for what? A. Interest.

Q. And you cannot tell to what period, or for what period the $60 paid interest, can you? A. No, sir.

MR. CAREY: I object to these checks.

THE VICE CHANCELLOR: I will admit them. They are now marked respectively Exhibits, C-27, C-28, C-29, C-30, C-31, C-32, C-33. C-27 is dated October 3, 1903, and is for $180. C-28 is dated October 29, 1903, and is for $2,060. C-29 is dated February 27, 1904, and is for $200. C-30 is dated July 6, 1904, and is for $201.67. C-31 is dated October 5, 1904, and is for $150. C-32 is dated January 4, 1905, and is for $150. C-33 is dated January 27, 1905, and is for $45.

BY MR. LANE:

Q. Now, Mr. Hogencamp, I show you another check and ask you what that check is? A. Check of Wm. Hogencamp, on the Second National Bank of Jersey City, dated April 20, 1905.

Q. For what? A. "Pay to the order of Sundry Credits, $51,486.50."

Q. Out of what account was that paid? A. Rent Account.

Q. What were those credits? A. Credits, Suspended Debt, Redfield, $23,628.98; do. B. & M., $12,500; Memo. (?) Bills, B. & M., $12,230; Redfield, Int., $3,127.54; making a total of $51,486.50.

Q. Whose indebtedness was that? A. Denton's.

MR. LANE: I offer that check in evidence.

THE VICE CHANCELLOR: Any objection?

MR. CAREY: I suppose it is admissible.

BY MR. CAREY:

Q. This whole amount went to the credit of the Suspended Debt, did it? A. No, sir; I think not.

Q. All right, tell us where it did go? Show on the books of the Bank where it did go?

MR. LANE: Turn to the Suspended Debt account of that date.

A. (After examining the said account.) I want to change my answer there in that respect; it did all go to the credit of Suspended Debt Account. (The witness now refers to General Ledger, No. 8, at page 68, Suspended Debt Account, and indicates the three following items: "April 20, 1905, Redfield, $23,628.96; do. do. B. & M., $12,500; do. Memo. (?) Bills, do. B. & M., $12,230; do. Redfield Inst., $3,127.54."

THE VICE CHANCELLOR: The check is admitted in evidence. It is marked Exhibit C-34, and is dated April 20, 1905, is on the Second National Bank of Jersey City, is for $51,486.50, and is signed by Wm. Hogencamp, and is to the order of Sundry Credits, and has on pencil on it "Rent %."

BY THE VICE CHANCELLOR:

Q. Who wrote the pencil marks there? A. I did sir.

Q. And what does that indicate? A. The account to which it was to be charged in the Individual Ledger.

Q. And that is "Wm. Hogencamp, Rent Account?" A. Yes, sir.

Q. On the back of this check there is a memorandum showing the items, exactly as they have been put upon the minutes, out of the Suspended Debt Account? A. Yes, sir.

Q. The $12,230, which appears on the Suspended Debt Account as "Memo. (?) Bills,"—will you kindly tell us what that was by reference to this Suspended Debt Account on the other side? A. Under the head of "January 30, 1905, 149th St. B. & M., $12,230."

Q. Now does that "149th St. B. & M." mortgage appear elsewhere on the books of the Bank? A. I think it does.

Q. Where? A. Under the head of "Bonds and Mortgages."

Q. Show it on the books of the Bank. Whereabouts is it? A. It is in General Ledger, No. 8, page 11. The item reads as follows: "Bond and Mortgage, 149th St. N. Y. City, 1905, January 1. Bal., 12,230." On the other side "January 30, Sus. Debt., 12,230."

Q. Turn to the General Ledger, No. 7, and find it there? A. Here it is (the witness refers to page 6 of the General Ledger No. 7, to the item, under date of August 24, 1904, reading as follows: "149th N. Y., 12,230."

Q. I show you check dated April 26, 1905, to the order of Sarah S. Horton, for $32,821.33,

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signed "Wm. Hogencamp," and ask you what that check is for? A. That is in payment of Mrs. Horton's interest in a mortgage.

Q. And who is Mrs. Sarah Horton? A. A sister-in-law of Mr. Denton.

Q. And for whose benefit was that amount paid?

MR. CAREY: Well, if the witness knows?

Q. Well, do you know? A. Yes.

Q. Well, whose? A. It is on Mr. Denton's account for her interest in a mortgage.

Q. What account was it taken out of in the Bank? A. Rent Account.

Q. "Wm. Hogencamp, Rent Account?" A. Yes, sir.

MR. LANE: I offer the check in evidence.

BY MR. CAREY:

Q. When did this Rent Account start? A. (Referring to the pass-book. 1903, in November.

THE VICE CHANCELLOR: The first item of deposit that the witness has is November 20, 1903.

Q. When does it end? A. June 7th, 1906. It was balanced and shows a balance of $30.84.

Q. This was paid on account of Henry M. Denton? A. Yes, sir.

Q. How do you know that? A. I remember the transaction distinctly.

Q. Did he ask you to pay it? A. Yes, sir.

Q. She had a mortgage on this property, hadn't she? A. Yes, sir.

Q. And you got the proceeds of the sale of the property? A. Yes, sir.

Q. You paid this amount to Mrs. Horton on a

mortgage indebtedness which was as an encumbrance upon that property, in connection with the sale and transfer of the title to the property, didn't you? A. Yes, sir.

Q. And without request from Mr. Denton or anybody else, did you not? A. No, sir.

Q. Does that check come out of the eighty-three thousand dollars concerning which you have testified heretofore? A. Yes, sir.

Q. When do you say you got that eighty-three thousand dollars? A. The book shows May 2nd, 1905.

MR. CAREY: And what is the date of the check, please?

THE VICE CHANCELLOR: April 26, 1905. It is certified. It shows on the back that payment was received through the Clearing House on the 27th of April, 1905. That is before he got the eighty-three thousand dollars.

MR. CAREY: I object to the admission of that check in evidence.

THE VICE CHANCELLOR: I overrule that objection and admit that paper. It is now marked Exhibit C-35. It is a check of Wm. Hogencamp, dated April 26, 1905, on the Second National Bank of Jersey City for $32,821.33, to the order of Sarah S. Horton. It has upon the face of it a stamp showing that it was certified by the Second National Bank of Jersey City, and payable at the Fourth National Bank of New York. On the back of it it bears endorsement as follows: "Pay to the order of Mackay & Co., Sarah S. Horton;" and under that "Pay to the order of First National Bank of New York, Mackay & Co;"

and then the endorsement "Received payment through New York Clearing House, April 27, 1905, First National Bank, New York."

BY MR. LANE:

Q. Now, Mr. Hogencamp, will you turn to the place in the Individual Ledger of the Bank in which appears the payment of the $7500 mortgage mentioned here last Tuesday? A. Yes, sir (witness refers to Individual Ledger No. 17, A to L, page 688, account "Wm. Hogencamp, Trustee," and indicates the item "January 30, 1902, $7584.79").

BY THE VICE CHANCELLOR:

Q. That is on the side that shows deposits to the credit of that account? A. Yes, sir.

BY MR. LANE:

Q. Will you turn to Mr. Shaw's individual account for August of 1902? A. I will have to have the M to Z Ledger then.

(Individual Ledger No. 17, M to Z shown the witness.)

Q. How did Mr. Shaw, Mr. Hogencamp, get the additional thousand dollars, the difference between the aggregate of the two notes of $12,000 and $13,000, and the $24,000 note?

MR. CAREY: I object to that as irrelevant to this issue, and immaterial.

THE VICE CHANCELLOR: I overrule the objection. Don't you understand that the testimony now is that this bond and mortgage is security for the payment of Shaw's indebtedness; and, therefore, we have got to investigate Shaw's indebtedness. The

present theory on which we are trying the case is that Denton put this bond and mortgage up as security for the payment of the Shaw indebtedness; and, of course, that makes it necessary to ascertain what Shaw's indebtedness was.

MR. CAREY: Well, the additional thousand dollars, as I understand the case, was the thousand dollars which was advanced in connection not with this note which is supposed to be secured by this mortgage, but in connection with another note, a new note, for $13,000 which was put up.

THE VICE CHANCELLOR: Where do you find any propriety in separating the two Shaw notes?

MR. CAREY: This bond and mortgage was never purported to secure anything but the Shaw $13,000 note which contained the one thousand dollar increase.

THE VICE CHANCELLOR: I am not at all sure that the testimony bears you out in that. I think you will find that it shows that Denton put this mortgage up for those notes at that time. I will overrule that objection anyhow.

A. His account was credited with a loan of $25,000, and it was debited with loans of $24,000, leaving a thousand dollars to his credit.

Q. And before that time was there deposited to Mr. Shaw's account $900? A. Yes, sir.

Q. I show you a check and ask you whether that is the check that evidenced that deposit? A. yes, sir.

Q That check went through what account? A. Wm. Hogencamp, Trustee.

THE VICE CHANCELLOR: Don't you mean that that was the account it was taken out of?

MR. LANE: I beg Your Honor's pardon. (To the witness): What account was that taken out of?

A. It was taken out of the account of Wm. Hogencamp, Trustee.

Q. And to whose account did it go? To the account of R. L. Shaw.

Q. In the Second National Bank? A. Yes, sir.

MR. LANE: I offer the check in evidence.

THE VICE CHANCELLOR: Cross examine, Mr. Carey, or do whatever you want to do.

BY MR. CAREY:

Q. Haven't you already testified that a check of Denton's for $900 went to make up this $900 in Shaw's account? A. Not that I recollect.

Q. You testified on that subject in the trial of the Richards-Shaw Foreclosure Case, did you not? A. Well, that was a check of Denton's, from Denton's money.

Question repeated. A. Yes, sir.

Q. And didn't you testify on that trial that the check that went to make up Mr. Shaw's account in the sum of $900, was a check of Mr. Denton's? A. I do not recollect that; no, sir.

Q. And was not the check produced at that trial? A. Not that I recollect.

Q. Do not you recollect a check of Mr. Denton's being produced for the sum of $900? A. I do not.

Q. Which was deposited in Shaw's account? A. I do not.

Q. Now, why do you say that this check which is now produced, bearing date January 30, 1902, was deposited in Shaw's account? A. From an inspection of the check, and my recollection of the circumstances.

Q. There is nothing on the check to indicate it, is there? A. Yes, sir; it says "Pay to the order of account of R. L. Shaw."

By the Vice Chancellor:

Q. What is the endorsement? A. No endorsement.

By Mr. Carey:

Q. From what account was that sum of $900 withdrawn? A. Wm. Hogencamp, Trustee.

By the Vice Chancellor:

Q. Trustee, or Rent? A. Trustee.

By Mr. Carey:

Q. Why do you say it was drawn from Wm. Hogencamp, Trustee? A. The check is signed that way.

The Vice Chancellor: I will admit the check. It is now marked Exhibit C-36. It is dated January 30, 1902; signed "Wm. Hogencamp, Trustee;" "Pay to the order of % R. L. Shaw, $900, Nine Hundred Dollars," and the punctures show that it was paid, and there are no endorsements of any sort.

By Mr. Lane:

Q. Now, Mr. Hogencamp, I show you a check of $900, to "% of R. L. Shaw, signed "Henry M. Denton," and ask whether that check ever actually went through the Bank? A. It did not.

Q. What was it used for? A. It was pinned fast, I suppose, attached to my check.

Q. As what? A. To show the transaction.

Q. Whose signature is that on that check? A. Henry M. Denton's.

Q. On the check that I now show you? A. Yes, Henry M. Denton's.

MR. LANE: I offer that check in evidence.

BY MR. CAREY:

Q. This check bears across the face of it the words "Trustee %." In whose handwriting is it? A. Mine.

Q. This check was marked in evidence in the Richards-Shaw Foreclosure case, was it not? A. I do not know, sir.

MR. LANE: It was, in fact.

THE VICE CHANCELLOR: Mr. Lane concedes it.

Q. Were the words "Trustee %" on the check at that time? A. Yes, sir.

Q. You saw the check on that occasion, did you, when it was offered in the Richards-Shaw suit? A. I presume I did. I am not positive about that.

Q. You are not positive? A. I am not positive; I presume I did.

Q. How do you know, then, that the words "Trustee %" were on the check at that time? A. I am positive that I put that check on it at the time we received it.

THE VICE CHANCELLOR: Read that answer.

(Answer read).

BY THE VICE CHANCELLOR:

Q. Do you mean that? A. That I put that endorsement on it at the time.

Q. That language? A. That language.

BY MR. CAREY:

Q. How do you connect this check with the check C-36? A. This (referring to Exhibit C-36) was the check that went formally to my account, and that check was to be attached to it as my authority.

Q. Was to be attached to it? A. Yes, sir.

Q. Well, was it attached to it? A. I don't know, sir. There are several pin marks on here. I cannot tell you whether it was or not.

MR. CAREY: I object to it.

THE VICE CHANCELLOR: The check is admitted. It is now marked Exhibit C-37. This is a check dated January 30th, 1902, on the Second National Bank of Jersey City, signed by Henry M. Denton, and reads "Pay to the order of % of R. L. Shaw $900, Nine Hundred Dollars," and has, in the witness' handwriting, across the face of it "Trustee %." It bears no endorsement of any sort, and has no punctures to show that it ever was paid.

MR. LANE: I ask the other side, in pursuance of a notice served, to produce a check for $24,144 (I think was the amount, I do not know the exact amount) of Shaw's; and a check for $400 of Gifford, and a check of $400 to the Second National Bank, all checks made by Shaw, which were marked in evidence in the other case.

THE VICE CHANCELLOR: What is your response, Mr. Carey?

MR. CAREY: I did not know that these had been called for. If we have got them here they may have them. I will see. (Mr. Carey produces three checks, which are pasted in a check book, and they are admitted in evidence and marked Exhibits C-38, C-39, and C-40).

THE VICE CHANCELLOR: Exhibit C-38, is a check of R. L. Shaw, dated August 27, 1902, to the order of the Second National Bank for $24,114.41, on the back of which is some handwriting.

BY THE VICE CHANCELLOR:

Q. Whose handwriting is that, Mr. Hogencamp referring to memorandum on back of check)? A. That is mine.

THE VICE CHANCELLOR: That handwriting is the following: "Interest on $12,000, June 30 to August 27, 114.41," and under that "Loan 24,000." This check does not bear any endorsement, but does have the three holes punctured in it, showing payment. The check is numbered 90. The stub has no other information that is on the face of the check, which I have dictated on the minutes, being simply a repetition of what is on the check.

The next check, marked C-39, is numbered 91, and is a check of R. L. Shaw, dated September 10, 1902, on the Second National Bank of Jersey City, to the order of the Second National Bank, for $400. The stub has exactly the same matter written on it; and there is no endorsement of any sort, excepting the "Paid" stamp of the Bank; and it has the puncture marks in it. This check is certified.

Q. Mr. Hogencamp, why would a check on the Second National Bank to the order of the Second National Bank be certified? A. I do not know, sir, unless it was to pay somebody else for something.

Q. If that was true it ought to bear some endorsement, ought it not? A. Yes, sir.

Q. And it does not? A. No, sir.

THE VICE CHANCELLOR: The other check called for and produced, marked Exhibit C-40, is numbered 89, and is a check of R. L. Shaw, dated August 27, 1902, to Charles S. Gifford, for $400. The stub has exactly the same legend upon it, and the endorsement upon the back of this check is the name of "Charles S. Gifford," and in somebody else's handwriting, in lead pencil, "H. M. Denton."

Q. Whose handwriting is that, is that your handwriting? A. No, sir; I think it was the Paying Teller of the Bank.

Q. It is not yours? A. No, sir.

BY MR. LANE:

Q. Now, Mr. Hogencamp, do you know in whose handwriting the body of these checks are? A. (After examining each of the three checks, Check No. 89, dated August 27, 1902, C-40, is in the handwriting of H. M. Denton, and the signature is R. L. Shaw's. No. 90, dated August 27, 1902, C-38, is in the handwriting of Henry M. Denton, and the signature at the bottom of it is R. L. Shaw's. And No. 91, C-39, is in the handwriting of Henry M. Denton, and the signature that of R. L. Shaw.

Q. Now, the endorsement on the back of this check for $21,114.41 was made when,—C-38? A.

At the time that I received the check, on the date of it, as I recollect.

Q. That was put on there, you say, when? A. At the time the check was made.

Q. And what does it mean? A. It means that the check was given in payment of the loan of $24,000, and interest up to that date, of $114.41.

BY THE VICE CHANCELLOR:

Q. On the $12,000? A. Yes, sir.

BY MR. LANE:

Q. Do you know Mr. Gifford? A. No, sir.

Q. Did you ever hear of him? A. I do not recollect any such man.

BY THE VICE CHANCELLOR:

Q. Do you know anything about that check, or why it was given, or anything about it? A. No, sir.

BY MR. LANE:

Q. What does the handwriting on the back of it indicate?

THE VICE CHANCELLOR: How does he know, if he did not make it? He says he thinks the Paying Teller may have made it.

Q. What is the custom in the bank in respect to an endorsement in lead pencil—what does that indicate, rather an endorsement in lead pencil appearing on the back of a check in that place?

MR. CAREY: I object to that, as to what the custom may be. He has not shown himself qualified to testify to that.

THE VICE CHANCELLOR: Oh, yes, surely; a man who was President of a bank for fifteen or twenty years has a right to testify

what the custom of the bank was; if the custom is relevant, he certainly is a proper man to testify to it,—who more so?

MR. CAREY: It does not appear in whose handwriting that is.

THE WITNESS: I am satisfied it was the Paying Teller's.

MR. CAREY: Until he has shown himself competent to testify to that handwriting, it certainly cannot be admissible.

THE VICE CHANCELLOR: He has testified now and given the man's name. I will overrule the objection, if that is the ground it is put on. I think he has sufficiently shown that he knows whose handwriting it is.

MR. CAREY: I object on the further ground that the custom of the bank cannot be binding on these defendants, and is not material in this issue.

THE VICE CHANCELLOR: I overrule that objection.

A. That indicates to me that the Paying Teller put—

MR. CAREY: Now I object to that.

BY THE VICE CHANCELLOR:

Q. That is not what you are asked. What you are asked is whether the bank had any custom concerning the writing on the back of checks, in lead pencil, of people's names by the Paying Teller? A. Yes, sir.

Q. What was the custom? A. When a party was not known—

Q. What party? A. A party to whom a check was drawn—came in there with a check, and he was not known, he would be identified by some-

body or other, and the teller would put on the back of the check the name of the man who identified him.

Q. So the presence, in lead pencil, of a person's name on the back of a check, which name did not appear anywhere else on the check, would indicate that the custom had been followed by putting the name of the identifying person on the back of the check in lead pencil? A. Yes, sir.

Recess until Thursday, September 22, 1910, at 10 o'clock, A. M.

Thursday, September 22, 1910.

Hearing of the cause resumed at 10 o'clock, A. M.

WILLIAM HOGENCAMP, recalled.

BY THE VICE CHANCELLOR:

Q. Mr. Hogencamp, in your direct examination, as appears on page 87 of the minutes, Mr. Lane asked you this question: "Q. The loan of the Hudson Trust Company, was that paid off? A. Eventually; yes, sir. Q. With whose money?", to which you replied, "I borrowed the money elsewhere and paid it." Can you tell us, from your memory, what you gave to the Hudson Trust Company in payment of that loan? A. I think it was my check.

Q. Well, does your memory hold any recollection as to whether that check was taken out of

your own funds in the bank, or out of funds which you had there in some capacity for Denton? A. Out of my own funds.

Q. Now, won't you turn to your account in the individual ledger, A to L, which would show items charged against it about January 27th, 1905, and see whether or not you can find any item of ten thousand odd dollars—whatever it be—that took up that loan of the Hudson Trust Company? There had been $3,500 paid on it, and that would leave $10,000? A. Yes, sir.

Q. All right. Now see if you can find that. A. (After looking at the witness' personal account in Individual Ledger, No. 18, A to L, pp. 802, 803). It did not go through my personal account, evidently.

Q. Won't you look in the Wm. Hogencamp, Rent Account, and see whether there is not an item there that indicates that it went through that account? A. I am now looking at the Wm. Hogencamp, Rent Account, page 798. There is no item there which indicates that it went through that account.

Q. That Rent Account on that page only goes down to the 28th day of January, 1905, so it would have had to come in immediately the next day, if it was to be in there? A. Well, this ran up to April, 1905, (referring to the account indicated on the page indicated).

Q. On the credit side, yes; and on the debit side the last item is the 28th of January, 1905, $45. A. Yes, sir.

Q. And there is no item there on the charge side, against you, of as much as a thousand dollars, even, is there? A. No, sir; nothing after—

Q. I mean from August of the year before, down through January of 1905, as far as the 28th? A.

There is only one item of $1,900, and all the rest are below that, between the periods the Court named, namely, August 30, 1904, and January 28, 1905.

Q. So it could not have gone through that account, could it? A. No, sir.

Q. Now, had you at that time any Wm. Hogencamp, Attorney, account—I mean the account which you heretofore testified was kept in that style for Denton? A. Yes, sir.

Q. Please look at the items of charge in that account, about this date, January 27th, 1905, and see whether there is any charge item there indicating that it may have come out of that account? A. (After examining the account indicated.) No, sir; the last item in here is January, 1904, in the debits, and in the credits, January, 1904.

Q. In looking over the Wm. Hogencamp, Rent Account, contained in Individual Ledger A to L, No. 18, I observe that it only goes down, on the credit side, to April, and on the charge side, to the 28th day of January, 1905; now, from other information acquired in the case, I recollect that this account did go further than that; so please look in Individual Ledger A to L, No. 19, Wm. Hogencamp, Rent Account, and see whether, on the charge side of that account, there is any item which indicates that this money, paying off the Hudson Trust Company loan, was taken out of that account? A. The first item was May 1st, 1905.

Q. The first item in the new ledger just mentioned, No. 19, is May 1st, 1905; and as the payment to the Hudson Trust Company was on the 27th of January, 1905, it is not likely that there is any item on the charge side of this account which indicates that payment? A. No, sir.

William Hogencamp—Recalled.

Q. Now, can you tell us, Mr. Hogencamp, how that did get paid? It does not appear to have gone through any of the accounts that you had in the Second National Bank? A. My recollection of it now is that I borrowed that money over at the Fourth National Bank, New York.

Q. But wouldn't it be natural, if you borrowed the money from the Fourth National Bank of New York, that they would give you some bank cashier's check, or something of that sort? A. Yes, sir.

Q. Which you would then pass through some of your own accounts here, and pay off to the Hudson Trust Company, so that you would have a voucher? A. Not necessarily.

Q. Well, of course, nothing is necessarily so in this world, perhaps, but death and taxes; but I did not ask you necessarily, I asked you whether or not it would not have been the normal business course, where you were giving a check for another man's loan, to have a voucher? I do not understand that,—in a large matter like that, ten thousand dollars of cash. You must recall that your testimony is that you took up this loan, in which you had no interest above a pure matter of philanthropy to Mr. Denton, and you do not appear to have the slightest evidence in the way of a voucher, or anything to show that you had any connection with it. Now, can you explain that in any way? Can you tell us where we can get any connection with it. Now, can you explain that in any way? Can you tell us where we can get any information concerning it? A. I think we can get it from the Hudson Trust Company at Hoboken.

Q. We had the books of the Hudson Trust Company, and the officer, as I understand, and there

was nothing there to show who had taken it up, or anything about it, as I recollect? A. No, but he was not asked that question.

THE VICE CHANCELLOR: The Court has asked all that the Court desires to ask. Now you may proceed, Mr. Lane.

MR. LANE: Will Your Honor, for the moment, permit me to suspend the examination of Mr. Hogencamp and call Mr. Ludlow and Judge Hudspeth on one point?

THE VICE CHANCELLOR: Yes, if the suspension won't lose more time than you gain by it.

MR. LANE: No, sir; I think not.

THE VICE CHANCELLOR: All right (To the witness). Step aside, Mr. Hogencamp.

ROBERT S. HUDSPETH, Esq., sworn.

DIRECT EXAMINATION by MR. LANE.

Q. Judge, you are a member of the bar? A. Yes.

Q. And were counsel for the Second National Bank when? About when did you start? A. Two or two and a half years ago I commenced.

Q. Wasn't it longer ago than that, by reference to the minutes? A. Let me see: If you have the minute, I can tell.

Q. Didn't you go in as special counsel for the bank when the trouble began in the bank? A. Yes, when the new management took hold.

Q. And that was in the latter part of 1905, was it not? A. It may have been. I have forgotten the date.

Q. Now, do you remember a transaction in

which Mr. Denton, Mr. Shaw and Mr. Hogencamp were interested? A. Somewhat.

Q. Did you have anything to do with the Denton-Shaw loan of $25,000? A. Yes.

Q. Do you remember the negotiations which led up to the assignment by Hogencamp of a mortgage to Mr. Harding? A. Some part of them.

Q. Will you tell us what you know about the transactions.

MR. CAREY: I object to that, if the Court please.

THE VICE CHANCELLOR: I will overrule that question. He may tell us a great deal that is not evidence, and counsel for the defense is entitled to be apprised of what is about to be elicited from him.

Q. How did the assignment from Hogencamp come to be made, if you know?

MR. CAREY: I object to that.

THE VICE CHANCELLOR: I make the same ruling. You have got to bring in something which is evidential against these defendants; and it may have come to be made in a way that could not possibly be binding upon them.

Q. Were you present at the negotiations which led up to the assigning by Hogencamp to Harding of the mortgages for $12,000 and $13,000? A. Some part of them.

Q. Did you take part in those negotiations? A. In that regarding the assignment of the mortgages to myself as trustee for the Bank.

BY THE VICE CHANCELLOR:

Q. He is now asking you about something else; he is asking you about assignments which he says

were made by Hogencamp to a man named Harding, preceding any assignments made to you; he wants to know whether you took part in any of the negotiations leading up to those assignments? A. I had knowledge of them.

Q. He asked you whether you took part in them? A. Some part.

BY MR. LANE:

Q. Were you present at conversations which took place between the President of the Bank, or the officers of the Bank, and Mr. Hogencamp, prior to that assignment, with respect to the Shaw indebtedness of $25,000?

THE VICE CHANCELLOR: When you say "that assignment," you mean the assignment to Harding?

MR. LANE: To Harding.

A. Will you let me see the assignment?

THE VICE CHANCELLOR: Certainly. Show him the Exhibit, Mr. Lane, it is Exhibit No. 3.

(Exhibit 3 shown the witness.)

A. I was not present at the time that assignment was made. That assignment was made by some one else, or, at least, drawn by some one else, and the obtaining of the execution was secured by some one else beside me.

Q. Were you present at the conversation between the officers of the bank which led up to that assignment? A. Which led up to that assignment?

Q. Yes. A. I had conversations with some of the officers of the Bank regarding the assignment before it was made; but I cannot recall that I was present when Mr. Hogencamp was there.

Q. Now, will you tell me what those conversations were, with respect to the purpose of the assignment from Hogencamp to Harding, that you had with the officers of the bank?

MR. CAREY: I object. It cannot be binding upon the defendants in this cause.

THE VICE CHANCELLOR: What justification, under the laws of evidence, can there be for the counsel of a bank telling of interviews between himself and his clients as to anything?

MR. LANE: Because the defense is that the Bank is not the holder of this mortgage, and that the Bank intended, some time or other, to deliver back the mortgage to Hogencamp. Whether the Bank did deliver the mortgage to Hogencamp, or Hogencamp took up the mortgage, is a matter which is a question of intention; and that intention can only be gotten at by the facts, the things which took place, the things which were said at or near the time the transaction took place. It is part of the *res gestae.*

THE VICE CHANCELLOR: I overrule the question.

Q. After the assignment was made to Harding did you have any conversations with the officers of the Bank and with Mr. Hogencamp with respect to the advance of any money by Mr. Harding. A. I would say, Mr. Lane, that as to that assignment which you have shown me from Mr. Hogencamp to Mr. Harding, that that all was performed without my physical presence. I had conversations regarding that matter with the officers of the Bank, and advised as to what should be

done. Then the assignment was drawn, I think, by Mr. McCrea, who represented Mr. Hogencamp, I believe. I was to draw the assignment, and he brought it in, and I examined it and saw that it was correct, but I do not think Mr. Hogencamp was present.

(The question was repeated at the direction of the Court).

A. I had, with the officers of the Bank, not with Mr. Hogencamp.

Q. Who was Mr. Harding? A. Mr. Harding? Why, I don't know who he was,—a gentleman, evidently a man of means.

BY THE VICE CHANCELLOR:

Q. Well, did you know him? A. No, I saw him, I did not know him.

BY MR. LANE:

Q. You never saw him? A. Oh, I saw him in the Bank once or twice, but I did not know him.

Q. With respect to this transaction? A. Well, I do not think I had any talk with Mr. Harding at all.

Q. Did Mr. Harding advance any money to the Bank?

THE VICE CHANCELLOR: To the Bank?

MR. LANE: Or to Mr. Hogencamp?

MR. CAREY: I object to that.

THE VICE CHANCELLOR: Yes, I think it must be immaterial whether he advanced any money to the Bank, is it not?

MR. LANE: I do not think so.

THE VICE CHANCELLOR: It is not?

MR. LANE: I do not think so.

THE VICE CHANCELLOR: All right; I will allow the question.

A. He did not.

BY THE VICE CHANCELLOR:

Q. Are you now speaking with respect to the Bank, or with respect to Mr. Hogencamp? A. The Bank, I was asked.

Q. Well, you don't know whether he did it to Mr. Hogencamp or not, do you? A. I do not.

BY MR. LANE:

Q. What happened, after the assignment was made to Mr. Harding, with respect to these mortgages, to your knowledge?

THE VICE CHANCELLOR: The physical possession of them, do you mean?

MR. LANE: No, the title to them.

MR. CAREY: I object to that. The papers in evidence will show what became of the title.

THE VICE CHANCELLOR: I will overrule the objection. The title to a mortgage does not necessarily have to pass by a written instrument. Fifty people may have had this mortgage in between the time that Harding gave the written assignment to him. He asked him as to his knowledge. If he does not know anything except what is in the written papers, he will have to say so; but the law, certainly in New Jersey, is that title to a mortgage may pass by delivery. Now, if he knows that it passed through fifty different people before it got to him, he has a perfect right to say so. I overrule the objection.

A. I Why, I had advised, these mortgages being in the name of Mr. Hogencamp—

MR. CAREY: I object.

THE VICE CHANCELLOR: Yes, you are not asked that; you are asked what happened, to your knowledge, to the title to these mortgages after the title was transferred by Hogencamp to Harding.

A. Assigned to me as Trustee of the Second National Bank.

Q. How did they come to be assigned to you as Trustee for the Second National Bank?

MR. CAREY: I object to that. The question of how they came to be assigned cannot be material to the issue in this cause, or relevant to it; and what arrangement may have been made with respect to the assignment between the Bank and Judge Hudspeth, or Hogencamp and Hudspeth, cannot bind the defendants to the action.

THE VICE CHANCELLOR: I overrule the objection.

A. In going over the paper of the Bank and the collateral security, the paper of Denton, Shaw and Hogencamp, which was held by the Bank to a large amount, was under criticism—

THE VICE CHANCELLOR: I will entertain a motion to strike that out. What I understood he meant by "how" was whether you gave money to Mr. Harding, or whether or not they were put in your name merely as a gift to the Bank. I understood the question to mean how, legally, did they come to be assigned to you as Trustee for the Bank, —what the modus operandi was—not a lot

of precedent history that was in your mind, or in somebody else's mind; and I will entertain a motion to strike out any answer to that question which is not confined to the facts which are legal testimony, namely, the things that took place which resulted in your getting the title. If that was an advance of money, you may say so. If it was a gift, you can say so. If it was to hold in trust for Mr. Hogencamp, or somebody else, you can say so.

THE WITNESS: This was brought to Mr. Hogencamp's knowledge.

MR. CAREY: I move to strike out that last answer.

THE VICE CHANCELLOR: I shall grant that motion; and I will say that the question, as put by Mr. Lane, (and which I allowed, overruling the objection to it), to my mind meant "How, as a matter of legal fact, did these mortgages come to be assigned to you?" That is to say, what was given for them—what did the Bank do which would entitle these mortgages to be assigned to you as Trustee?

THE WITNESS: Well, if Your Honor please, the assignment speaks for itself. It does not indicate the trusts, and the trusts are all by parole and antecedent to the making of the assignment; and that was talked over by the officers of the Bank, myself and Mr. Hogencamp; and it was upon that, as I was going to state, that the assignment was made to me.

THE VICE CHANCELLOR: If I remember it, you began by saying that you made some investigation of the Denton and a lot of

other accounts in the Bank, and that you and the Bank officials had reached a conclusion that they were too heavy or something of that kind—

THE WITNESS: No, that they were under criticism; and that was brought to Mr. Hoencamp's knowledge, and the result was this.

THE VICE CHANCELLOR: Well, I do not think that ought to have been permitted as an answer to the question that was asked you. What I am going to do is to permit you to answer the question, and then permit Mr. Carey to move to strike out anything which he thinks is not a proper answer to the question because irrelevant, immaterial or incompetent.

(Former question repeated as follows).

Q. How did they come to be assigned to you as Trustee for the Second National Bank? A. To put the collateral in proper legal shape for the benefit of the Second National Bank.

MR. CAREY: I move to strike that out as a conclusion, not a statement of fact. It is a conclusion of the witness.

THE VICE CHANCELLOR: Why is not that so, Mr. Lane?

MR. LANE: I have no objection.

THE VICE CHANCELLOR: It will be stricken out.

BY MR. LANE:

Q. Now, give us the facts, just what took place, the whole history. A. These mortgages, to wit, the mortgage on the Jersey City property made by Shaw, and the mortgage on the Lakewood prop-

erty made by Denton, were in the name of William Hogencamp, without any indication that he held them as Trustee, or as collateral, or for the benefit of the Second National Bank, of which he was President at the time that the mortgages appeared to have been made and delivered to him. Mr. Hogencamp was requested to turn them over to me as Trustee for the Second National Bank, so that there could be no question as to the fact that they were collateral for the benefit of the Second National Bank; and the assignment was made by Mr. Hogencamp, to carry out the trust under which he held them for the benefit of the Bank, to me.

MR. CAREY: I move to strike out the answer, which evidently undertakes to state conversations which took place between the witness, the Bank officials, and, possibly, Hogencamp—although it does not clearly appear that Hogencamp was present; and those statements cannot be binding upon the defendants in this action.

THE VICE CHANCELLOR: I shall overrule that objection. It seems to me, however, that there is a pertinent objection to this answer, which is that he is talking about something which is not before us at all. He is talking about some assignment that Hogencamp made to him, and there is no evidence of any assignment that Hogencamp made to him.

BY MR. LANE:

Q. When you refer to the assignment that Hogencamp made to you, do you mean the assignment that appears in the record, from Harding to you? A. I mean the assignment that is here,

when I spoke of Hogencamp. Mr. Harding was interpolated, unfortunately, by an assignment to him which never was effective, and, instead of it being destroyed and Mr. Hogencamp making the assignment to me, it was made by Mr. Harding carrying out what Mr. Hogencamp was to do.

MR. CAREY: Now I move to strike out both of the answers, upon the ground that they relate to transactions which took place not in the presence of the defendants; and that they state conclusions of the witness, and not facts.

THE VICE CHANCELLOR: I overrule that motion.

MR. CAREY: Then I move to strike out the first of these two answers on the ground stated by the Court, that the answer relates to assignments made not to the witness but to Harding.

THE VICE CHANCELLOR: Oh, he said they were made to him. He distinctly said: "They were made to me," the witness; but they appeared to relate to a transaction that is foreign to this case, because he said they were assignments made by Hogencamp to him, and throughout the four or five days we have been trying this case such assignments have never been referred to. The second answer straightened that out. He then said he did not refer to any assignment made by Hogencamp to him, that he referred to the assignment made by Harding to him. I shall allow the answers to stand, as given.

Q. Now, will you tell us for what purpose the assignment to Harding was made?

MR. CAREY: I object to that.

THE VICE CHANCELLOR: Yes, I shall overrule that. Let it be confined at first to whether he knows.

THE WITNESS: Yes.

THE VICE CHANCELLOR: Now, I will permit a cross examination, on your part, Mr. Carey, as to the sources of his information,—whether it was hearsay or personal knowledge.

BY MR. CAREY:

Q. I understood you to say that you did not have any conversation with Mr. Harding with regard to this matter; is that so? A. Not that I can recall.

THE VICE CHANCELLOR: The question was, do you know the purpose of the assignment to Harding, and I am letting you cross examine as to how he knows, whether he knows from that which is legal evidence, or whether he knows from that which cannot be legal evidence.

Q. Do you know that from conversation with the officers of the Bank? A. Yes.

Q. And from conversations with Harding? A. No.

Q. And you have already stated, as I recall, that you had no conversation with Mr. Hogencamp with respect to it? A. I have not said so. I said I had no conversation with Mr. Harding.

Q. Did you have any conversation with Mr. Hogencamp with respect to this assignment? A. Part of it.

Q. Part of what? A. Part of the negotiations.

Q. Was Mr. Denton or Mr. Shaw present at any of those negotiations? A. No.

Q. Not present at any of the conversations between you and the Bank officials, or between you and Hogencamp? A. Not that I ever remember.

Q. And the Bank officials told you the purpose of the assignment? A. I advised the Bank officials as to the assignment, and they instructed me as to the same.

MR. CAREY: I object to the witness being allowed to testify.

THE VICE CHANCELLOR: I am inclined to agree that he has not any such sources of information as make his testimony legal. The evidence in the case produced by you, Mr. Lane, is that Mr. Hogencamp arranged with Mr. Harding to assign certain securities to Mr. Harding and obtain $35,000 from Mr. Harding, which he, Hogencamp, was then to advance to the Bank, and that Harding did not advance the money. That was purely a transaction between Hogencamp and Harding, according to Mr. Hogencamp's testimony; and I do not see why Judge Hudspeth gets any more right to tell us what the arrangement was between Hogencamp and Harding than he could of an arrangement between you and me.

MR. LANE: This is now a controversy between the Bank and Hogencamp—that is, if the testimony is as Your Honor states it—

THE VICE CHANCELLOR: Have I misstated it in any particular?

MR. LANE: I do not think that the statement with respect to the transaction being

entirely personal between Hogencamp and Harding is exactly correct—well, it may be exactly correct, that the arrangement between Harding and Hogencamp was personal.

THE VICE CHANCELLOR: Absolutely. There is no question about it.

MR. LANE: Hogencamp was to get Harding to advance certain money?

THE VICE CHANCELLOR: Yes, Harding was to advance $35,000 to Hogencamp, and Hogencamp was to hand that over to the Second National Bank—a purely personal transaction between Hogencamp and Harding—and that did not happen. I am taking the testimony now. Now, how do you get the right to have this witness testify to what somebody told him was the arrangement between those two individuals?

MR. LANE: Cannot I show, if Your Honor please, what the Bank intended? The Bank had these mortgages ; these were the Bank's mortgages that were assigned to Harding. That is the testimony. Hogencamp has testified all the way through that he held them as Trustee for the Bank. Now, we find that Hogencamp assigns to Harding mortgages which he testifies he held as Trustee for the Bank. Am I not entitled to show what the Bank intended by that transaction?

THE VICE CHANCELLOR: What they intended?

MR. LANE: Yes, what they intended by it.

THE VICE CHANCELLOR: There are very few cases, as I remember the law (except

in criminal law, and some questions of fraud) where the Court can go into speculations as to people's intentions. We are concerned with their acts, with their contracts, with their conversations. But there are very few cases where one is allowed to testify as to what his intention was. Laying aside what the law may be with respect to witnesses testifying to their intentions, I am clear that you are entitled to have this witness testify to facts, to contracts, to agreements which concern these mortgages; and if they made an agreement of which he has first-hand knowledge, concerning these mortgages, I will, so far as I am now advised, (changing my view if Mr. Carey's objections cause me to change it) permit you to have him give such testimony. But that is not the question you have now asked him. You have asked him about purposes, and whether he knows the reasons of things. There are very few cases in which, I think, legal testimony comprises intentions and reasons. It comprises facts; and the Court will then, after hearing the facts, assign the reasons and draw the inferences as to intentions.

Question withdrawn.

Q. Will you, Judge Hudspeth, tell us, as near as you can recollect, the conversations which took place between the officers of the Bank and Mr. Hogencamp, in your presence, prior to the giving of the assignment by Hogencamp to Harding with respect to that assignment?

MR. CAREY: I object to that, because the witness has testified already that he does not recollect that Mr. Hogencamp was

present at any conversation between him and the officers of the Bank.

THE VICE CHANCELLOR: I overrule the objection. If that is the fact, then the witness will have to say that he cannot tell us, because he never had such conversations.

THE WITNESS: I do not recall that I said that Mr. Hogencamp was not present, Your Honor.

THE VICE CHANCELLOR: Never mind, I have made my ruling.

MR. CAREY: I make the further objection that the witness has already testified that neither Mr. Denton nor Mr. Shaw were present at any of those interviews; consequently, whatever took place between them were matters between other parties and cannot bind the defendants.

THE WITNESS: May it please Your Honor, I think I have the right as a witness to say that the objection of counsel, based upon the statement that the witness has testified that Mr. Hogencamp was not present at any time, is not based upon the testimony.

THE VICE CHANCELLOR: I overruled the objection. You may answer the question.

THE WITNESS: May I testify as to the transaction?

THE VICE CHANCELLOR: (To the stenographer) Read the witness the question. (To the witness) You must answer that question, Judge. If you cannot answer it you can say so and then let Mr. Lane ask you another question.

Question repeated as follows: Will you, Judge

Hudspeth, tell us, as near as you can recollect, the conversations which took place between the officers of the Bank and Mr. Hogencamp, in your presence, prior to the giving of the assignment by Hogencamp to Harding with respect to that assignment? A. As I testified before, this paper of Denton, Shaw and Hogencamp, and the securities, was under consideration by the Bank officials and myself, as counsel; and I was instructed to investigate. Mr. Hogencamp was not present at all of these different conversations that occurred between myself and the Bank officials, but at some of them during the negotiations to straighten out these notes and securities. The part of the conversation when Mr. Hogencamp was present, that occurred between myself and the Bank officials and himself, as I recall, mainly referred to securing a formal assignment of the mortgages to myself as Trustee for the Second National Bank. An assignment had been secured in the name of one Harding; and it being ascertained that that was the condition, instead of Mr. Hogencamp making the assignment directly to me he secured the assignment in the name of Harding to me, as Trustee; it being understood by Mr. Hogencamp, the Bank officials and myself that those mortgages were held by Mr. Hogencamp at all times for the benefit of the Bank, and as collateral for the Bank.

MR. CAREY: I move to strike out that part of the answer which states what the understanding was between the bank and Hogencamp and the witness.

THE VICE CHANCELLOR: Well, I refuse to strike it out, because it seems to me that, in the sense in which he uses it, it was synonomous with the words "dealt with,"

and it would have been perfectly legal testimony if he had said that these mortgages had "always been dealt with," etc.

MR. CAREY: I move to strike out all that part of the answer which, according to the testimony of the witness, relates to matters at which Mr. Hogencamp was not present; the witness' testimony being that the part of the negotiations at which Mr. Hogencamp was present related merely to the procuring of a formal assignment.

THE VICE CHANCELLOR: That is all he was talking about. He gave no other testimony than that that I know of. He has testified to no part of any of this transaction except that the Bank officials and Hogencamp and he agreed that he, Hogencamp, should procure the assignment of these mortgages to the witness as Trustee for the Bank.

MR. CAREY: He has testified further that this paper of Shaw and Denton was under discussion.

THE VICE CHANCELLOR: Yes, and I will permit that. I think, in this case, one of the issues is what relationship Hogencamp had to Denton's paper and to Shaw's paper.

BY MR. LANE:

Q. Now, do you remember, Judge, what, if anything, Mr. Hogencamp did with respect to the Shaw paper as distinguished, now, from the Shaw and Denton mortgages? A. What do you mean by "did with them,"—what particular paper?

THE VICE CHANCELLOR: Physically, do you mean?

MR. LANE: No, not physically.

THE VICE CHANCELLOR: Well, I am like the witness, I cannot conceive what you mean.

Q. Do you remember any conversations between the officials of the Bank and Mr. Hogencamp, in your presence, which led up to Mr. Hogencamp's guaranteeing the Denton-Shaw paper?

MR. CAREY: If the Court please, we ought to know what officials of the Bank they were.

THE VICE CHANCELLOR: Let him first say yes or no. If he says no, that ends it; if he says yes, then probably the next question will develop that.

A. Yes.

Q. What were the conversations, as nearly as you can recall?

THE VICE CHANCELLOR: Now, the objection is on the ground that neither the time, place nor the persons are involved in the question. I sustain that objection.

Q. With whom did you have these conversations? A. Mr. Hasking, the Cashier of the Second National Bank; the committee of Directors, and—

BY THE VICE CHANCELLOR:

Q. Who composed the committee? A. I cannot recollect at present without reference to the minutes—and, only rarely with Mr. Hogencamp.

BY MR. LANE:

Q. Where? A. At the Bank building.

Q. Do you remember when? A. About the time of the making of the assignment to Harding which is in evidence.

Q. Do you remember the substance of the conversation? Do you remember the details, first? A. I cannot give you the details of the conversation.

THE VICE CHANCELLOR: Now he asks you whether you remember the substance, and the answer to that must be yes or no.

A. Yes.

Q. I will ask you to give us the substance.

MR. CAREY: I object to the question on the ground that the defendants, Shaw and Denton, were not present at such conversations; that it relates to matters purely between the Bank and Hogencamp; and that Mr. Hogencamp himself was not present except on rare occasions, according to the statement of the witness.

THE VICE CHANCELLOR: I think, clearly, that conversations that the committee and other officials of the Bank may have had with Judge Hudspeth about this matter are not evidence in this suit. What conversations were had by Mr. Hogencamp with officials of the Bank, in the presence of Judge Hudspeth, or by Judge Hudspeth representing the Bank with Mr. Hogencamp, I am inclined to think are evidential; because the ownership of these notes, and the relationships of the various parties, Hogencamp and the Bank and Harding and Hudspeth, to these notes and these mortgages is very material in this suit; and I think the Bank is entitled to elicit evidence of what took place between it and Hogencamp concerning these notes and mortgages in suit; and on that theory I

am going to admit an answer by this witness to so much of the question as concerns conversations or transactions between officials of the Bank or Judge Hudspeth and Mr. Hogencamp regarding the subject matter inquired about.

MR. CAREY: Now, I would like to have him name the committee of the Directors that has been mentioned, so that we may know the individuals.

THE VICE CHANCELLOR: He says that he cannot give them. The witness says "I do not remember the names of that committee," and to my mind it is immaterial now, because what he is going to testify to now, under by ruling, is not what he said and did with the committee at all, but what Mr. Hogencamp said and did, in his presence, concerning this matter.

A. What Mr. Hogencamp said I cannot recall. What he did was to give—

MR. CAREY: I object to that, as going beyond the question.

THE VICE CHANCELLOR: Yes, I think the question entirely related to what the conversation was. You must ask your next question.

Q. What did Mr. Hogencamp do? A. He first secured the assignment of the mortgages to me, as Trustee, which are in evidence—I won't say "first," I will qualify that—he secured the assignment of the mortgages to me which are in evidence. He gave mortgages upon his property in Paterson and at Deal Beach, which I examined the title to. I also examined the title to the Lakewood property.

By The Vice Chancellor:

Q. That is the property covered by the Denton mortgage? A. Yes. And the Jersey City property.

Q. And that is the property that covers the Shaw mortgage? A. Yes, sir.

Q. Go on. A. As we could find no abstract in the archives of the Bank. Then Mr. Hogencamp gave an additional note or notes.

Q. Of his own? A. Of his own, as I recall.

Q. Now when you say that he gave mortgages on the Deal property owned by him and on the Paterson property owned by him, does your memory hold as to whether he made those mortgages directly to you as Trustee for the Bank, or whether, having previously made such mortgages to Mr. Harding, he caused Mr. Harding to transfer such mortgages to you as Trustee for the Bank? A. I cannot say.

Q. It may have been one way, or the other? A. Yes.

Q. What you are clear of is that he put over into you, as Trustee for the Bank, a mortgage on his Deal property, and a mortgage on his Paterson property, and the Denton mortgage for $12,000 on the Lakewood property, and the Shaw mortgage for $13,000 on the Jersey City stable property; is that correct? A. I am clear that the assignment of the mortgage on the Shaw Jersey City property and the Denton Lakewood property was made to me direct, as Trustee, by Harding.

Q. By Hogencamp? A. By Harding, from Hogencamp.

Q. Now, what about the other properties? A. I do not recall whether they were made to me or not.

Q. That may have been one way or the other? A. It may have been one way or the other.

Q. Now, answer my question as I put it.

Former question repeated as follows:

Q. What you are clear of is that he put over into you, as Trustee for the Bank, a mortgage on his Deal property, and a mortgage on his Paterson property, and the Denton mortgage for $12,000 on the Lakewood property, and the Shaw mortgage for $13,000 on the Jersey City stable property; is that correct? A. I cannot say as to the Paterson and Deal properties.

Q. Well, I do not understand that testimony. I thought you said distinctly that you got, as Trustee for the Bank, a mortgage on his Deal property,—didn't you? A. No, sir, I do not think I did. I said he was to do that, I did not say he was to give it to me.

(The testimony formerly given by the witness on this point was repeated to him, at his request, as follows: "What did Mr. Hogencamp do? A. He first secured the assignment of the mortgages to me, as trustee, which are in evidence—I won't say 'first,' I will qualify that—he secured the assignment of the mortgages to me which are in evidence. He gave mortgages upon his property in Paterson and at Deal Beach, which I examined the title to. I also examined the title to the Lakewood property.")

Q. What I am trying to find out is this, Judge: Irrespective of the person to whom these mortgages ran, is not this the result of your testimony and the facts, as you recall them: That Mr. Hogencamp, in connection with these notes, saw to

it that you, as Trustee for the Bank, had a mortgage which was a lien upon his Deal property, had a mortgage which was a lien upon his Paterson property, had title to the Denton Lakewood mortgage, and had title to the Shaw stable Jersey City mortgage. Is not that the fact? A. Well, Your Honor puts it in such shape that I am testifying that those mortgages on the Deal and Paterson properties were made to me.

THE VICE CHANCELLOR: I am not. (To the stenographer): Read the question. That is the very thing I have avoided doing. If you listen to it you will see that that is so.

Question repeated.

A. What notes does Your Honor refer to?

Q. Those notes that you have just been talking about, that you said Hogencamp had guaranteed, or was providing for the security of to the Bank. I do not know anything more than you have said. You have been testifying that this man did it to "secure these notes," and I supposed you knew what notes you were talking about. A. Yes, sir.

BY MR. LANE:

Q. Now, before Mr. Hogencamp actually had the assignments executed, do you remember whether he guaranteed the payment of those notes—do you remember without reference to any memorandum? A. I cannot say, Mr. Lane, for the reason that I had given advice as to what was to be done, and, as I say, I saw Mr. Hogencamp but rarely, but did see him at important periods; and that he did as I have testified to. That is all that I can recollect.

Q. I show you a paper dated October 17, 1905, purporting to be signed by Wm. Hogencamp, and

ask you whether a reference to that will revive your recollection as to what took place with respect to guaranteeing the note before the mortgages were given? A. That was one of the times I did not see Mr. Hogencamp.

Q. When did you get this paper?

MR. CAREY: I object to that. It does not appear that the witness ever received it.

Q. Did you get that paper? A. I got that paper.

Q. Will a reference to it tell you when you got it? Refer to the back of it. A. I got that paper either during the early investigation of these notes and securities, or about the time of the trial between Richards and Shaw on the foreclosure of the mortgage on the Jersey City property.

MR. CAREY: May I ask whether that paper has been admitted in evidence?

THE VICE CHANCELLOR: It has not.

Q. From whom did you get it, or among what papers was it found? A. That is difficult to say, amongst what papers it was found.

Q. Well, did it come from the Bank or from some one else?

MR. CAREY: I object to the question as leading.

THE VICE CHANCELLOR: Yes, the question is overruled.

Q. Where did you get it from? A. It came from the archives of the Second National Bank.

Q. Do you remember the person who actually handed it to you? A. I cannot recall, Mr. Lane.

Q. Or where it was actually found? A. I cannot recall that. I may say, in that particular, that

there were half a dozen people making investigation and search.

MR. CAREY: I object to the witness making voluntary answers.

THE VICE CHANCELLOR: I overrule that objection. He is stating now the reason why he cannot remember which one of half a dozen people handed him the paper. He said there were half a dozen people searching for the paper. He says: "There were so many people searching among these records, I cannot remember which one it was."

Q. Do you know anything about the endorsement by Hogencamp of the Shaw notes?

THE VICE CHANCELLOR: He means of your own knowledge, do you know—not what you heard some one else say, but do you have any personal knowledge of Mr. Hogencamp's writing anything on the back of these Shaw notes?

A. I have not.

Q. The Shaw note of $13,000 appears to have been endorsed by Mr. Hogencamp,—were you present at any conversation between Hogencamp and the officers of the Bank which led up to that endorsement?

MR. CAREY: I object to that, as that note is not material in this case.

THE VICE CHANCELLOR: I overrule that objection.

A. I do not recall.

Q. Do you remember Mr. Hogencamp giving a note for $35,000, or thereabouts, to the Bank?
A. Only by hearsay.

Q. Hearsay from whom? A. Some Bank official.

THE VICE CHANCELLOR: He means he never saw the note, and does not know, except what somebody else told him about it.

THE WITNESS: I did not say I never saw it, if Your Honor please. I did not see it given.

THE VICE CHANCELLOR: Then I do not understand your testimony. If I was asked if I knew anything about a note that Mr. camp had given the Bank, and I had seen it, I would say: "Yes, I know it because I saw it."

THE WITNESS: We are only dealing with hearsay evidence, that is all.

THE VICE CHANCELLOR: How would you be dealing in hearsay evidence, if you actually, physically saw, in the possession of the Bank, afterwards, the note? Go ahead, Mr. Lane.

BY MR. LANE:

Q. Do you know in what form the guarantee of Mr. Hogencamp on this paper was put finally?

MR. CAREY: I object to that, as the evidence does not show as yet that there was any guarantee.

THE VICE CHANCELLOR: I sustain the objection. The form must appear by reading the paper.

Q. Do you know what the Bank and Mr. Hogencamp did with respect to his guaranteeing this paper?

MR. CAREY: I object to the form of the question.

THE VICE CHANCELLOR: I overrule the objection. It is just yes or no, whether he knows or does not know. If he says no, that ends it; if he says yes, then we will go into the details.

A. From the fact, and the form of the paper in question.

Q. Were you present at any conversations which led up to Mr. Hogencamp's guaranteeing this indebtedness?

THE VICE CHANCELLOR: Before the written paper of October, 1905, is that? What is the date of that paper?

MR. LANE: October, 1905.

A. I have already testified to that.

Q. Well, what is it, we forget? A. That Mr. Hogencamp was to give—

THE VICE CHANCELLOR: No, repeat the question. (Question read.) You are merely to answer yes or no, now.

A. Yes.

Q. What led up to his guaranteeing it? A. The insistment that he should give additional security for the Denton and Shaw paper, in view of the fact that he had not been able to raise the $35,000 to pay the Bank.

BY THE VICE CHANCELLOR:

Q. That was all before October, 1905? A. I could not say as to the date.

Q. That is what you are asked? A. I cannot say as to the date.

Q. That is the only thing you are asked. The question was this, whether before October, 1905, you were present at any negotiations between the

Bank and Mr. Hogencamp concerning Mr. Hogencamp's guaranteeing the Shaw paper? A. If October, 1905, is the date of the assignment—

Q. No, October, 1905, is the date of the written paper which you say was found among the archives of the Bank, and it was shown to you. A. I did not recall that that was the date of the paper.

Q. But you testified when you were asked as to whether you were present and had knowledge, "yes," and then you were asked about something which had not taken place for a year.

THE WITNESS: (To Mr. Lane.) Let me see that paper, Mr. Lane, and let me see the assignment.

(Papers asked for by the witness being Exhibit M. L., 1, for identification, and the assignment to Robert S. Hudspeth, Exhibit 4, are now handed to him by Mr. Lane).

A. I would say, Mr. Lane, regarding the paper writing of October 17, 1905, that that was made by Mr. Hogencamp when I was not present, and I do not recall that I was present at any interview when it was agreed by Mr. Hogencamp that he should give this paper writing

THE VICE CHANCELLOR: That answers the question that was asked. Now, go ahead, Mr. Lane.

Q. Were you present at any interview between Mr. Hogencamp and the officials of the Bank, at which Mr. Hogencamp agreed in some way to secure the Shaw-Denton indebtedness? A. Yes.

Q. Now, will you give us the substance of those conversations?

MR. CAREY: I object to the question, because it does not fix the time, and it does not fix the persons with whom the conversation was had.

Q. When did the conversation take place? A. Prior to March, 1906.

BY THE VICE CHANCELLOR:

Q. With whom were these conversations? A. The committee and Bank officials that I have already alluded to, and Mr. Hasking at times, and with Mr. Hogencamp, at some of which I was not present, and at one or two at which I was present.

THE VICE CHANCELLOR: In my view, you can only properly give testimony as to those occasions when Mr. Hogencamp was present.

BY MR. LANE:

Q. Give us the substance of what Mr. Hogencamp said with respect to these mortgages. A. The Bank officials, at the time Mr. Hogencamp was present and I was present, insisted that Mr. Hogencamp should give additional security and guaranty to that which they had for the Denton-Shaw paper.

Q. And what did Hogencamp say at that time, if anything, with respect to the capacity in which he held the Denton-Shaw mortgages?

MR. CAREY: I object to that as not binding on the defendant.

THE VICE CHANCELLOR: I will overrule that objection,—not that it is binding on the defendants, but because I think it is entirely relevant for the complainants here to show who owned these mortgages. Your insistment is that Hogencamp owned them.

Now, if Shaw said something which showed who he thought owned them I think that is material.

A. That he held them for the Second National Bank as collateral security for the Shaw and Denton paper.

Q. Did he ever get those mortgages for himself?

MR. CAREY: I object to that question.

THE VICE CHANCELLOR: I will sustain that objection.

Q. Do you know whether Mr. Hogencamp, subsequent to the time that he told you that he held the paper as Trustee for the Bank, got the paper for himself—got the mortgages for himself from the Bank? A. Not to my personal knowledge.

Q. Are you a director of the Bank? A. Yes.

Q. And have been a director of the Bank how long? A. Since about January, 1906; some time in 1906, I cannot recall definitely.

Q. And these matters were discussed in the Board of Directors' meetings? A. No, these matters were under consideration and negotiation before I became a member of the Board of Directors.

Q. Have you advised the Bank continuously since you became special counsel with respect to this particular paper?

THE VICE CHANCELLOR: What paper?

MR. LANE: I mean this particular transaction.

A. Yes.

Q. To your knowledge, has Hogencamp ever received that paper from the Bank for his own benefit? A. Why, no.

Q. In what capacity do you now hold these mortgages? A. Which mortgages, Mr. Lane?

Q. The Denton and Shaw mortgages? A. That is, on the Jersey City property or the Lakewood property?

Q. I beg your pardon, I have a distinction there: In what capacity do you now hold the mortgage on the Lakewood property? A. Is this the assignment, Exhibit 3 of complainant (referring to the paper now in the witness' hand)?

THE VICE CHANCELLOR: No, he means the Denton mortgage which Mr. Hogencamp, you say, caused Mr. Harding to assign to you on the 10th of April, 1906, by Exhibit 4. It reads "Robert S. Hudspeth, Trustee."

A. I hold it as Trustee for the Second National Bank.

Q. And have always held it for that Bank? A. Always.

CROSS EXAMINATION BY MR. CAREY:

Q. The negotiations to which Harding was a party took place about the time of the assignment of these mortgages to Harding, about the time of the date of the assignment? A. I should judge so, from what I have heard, Mr. Carey.

Q. And the conversations with Mr. Hogencamp, relative to giving additional security for the paper of Denton and Shaw, took place at about the same time? A. Yes. When you say "the same time", do you mean antecedent or subsequent to the assignment to Harding? One minute, I should say, upon reflection that the insistment for the additional security from Mr. Hogencamp followed the failure of Mr. Hogencamp to get the $35,000 from Mr. Harding.

Q. Followed the failure to get it? A. Yes.

Q. And the failure of Mr. Hogencamp to get the $35,000 from Harding was subsequent to the assignment of the mortgages to Harding, was it not? A. The assignment of the mortgage to Harding was to assign Mr. Hogencamp in getting that $35,000.

Q. And after the assignment was made, Mr. Harding, as I understand you to say, failed to produce the money? A. That is my recollection from hearsay. I did not see Mr. Harding.

Q. And upon the failure of Mr. Harding to come forward with the money, the bank then insisted that Mr. Hogencamp should give additional security? A. That is a little bit too close, Mr. Carey. I cannot say that it was on that day.

Q. Well; subsequent to the time? A. I cannot say as to the day. It was during these negotiations; and I was informed, after Mr. Harding had failed to get the $35,000, that then the demand upon Mr. Hogencamp for additional security was made and insisted upon by the committee that I have alluded to.

Q. Can you, by any means, ascertain the names of the committee to which you have referred? A. I think there is a minute of the committee.

Q. And if you can ascertain the names of this committee, will you do so, and state to the court who they were? A. Certainly, with pleasure.

SAMUEL LUDLOW, JR., sworn.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Ludlow, are you President of the Second National Bank? A. Yes, sir.

Q. How long have you been president? A. Since April 6, 1906.

BY THE VICE CHANCELLOR:

Q. Whom did you succeed? A. There is some doubt in my mind, Judge, just who I did succeed; I believe it was William Hogencamp.

BY MR. LANE:

Q. Let me refresh your recollection. Was not Joseph L. Hanley in there as president? A. Joseph L. Hanley was President for a time.

Q. Does the Second National Bank hold paper of Mr. Shaw and Mr. Denton? A. Yes, sir.

Q. And are these notes, one for $13,000 dated August 27, 1902, and the other for $12,000 dated June 30, 1902, held by that bank?

THE VICE CHANCELLOR: But you do not say by whom they are made.

Q. Made by Robert L. Shaw, and one mortgage here, Exhibit C-19; were they held by the bank? A. Yes, sir.

Q. And how long have they been held by the bank to your knowledge? A. Ever since I have been with the bank.

Q. Now, does the bank hold any additional security for the payment of those notes? A. Yes. sir.

Q. What? A. They hold a note of William Hogencamp for $35,000, secured in addition to that, by mortgages on Mr. Hogencamp's Deal and Paterson properties.

Q. And how long have they held that note? A. Ever since I have been with the bank.

Q. Has this $12,000 Shaw paper been paid? A. No, sir.

THE VICE CHANCELLOR: To his knowledge, of course, you mean?

MR. LANE: Upon the books of the bank, either.

A. No, sir.

MR. CAREY: He cannot be asked to testify what the books of the bank show.

THE VICE CHANCELLOR: Why did not you say so? If you say so I will sustain the objection.

MR. CAREY: I object to it then.

THE VICE CHANCELLOR: I will sustain the objection. Strike out what the witness testifies to as to what is on the books of the bank. I will permit the witness to be asked whether to his knowledge it has been paid.

Q. You are President of the bank, and to your knowledge has it been paid? A. No, sir.

CROSS EXAMINATION BY MR. CAREY:

Q. Were you present at any negotiations between Mr. Hogencamp and the officers of the bank with respect to putting up additional security for Hogencamp's indebtedness? A. Initially, do you mean?

Q. (Question repeated.) A. Yes, sir.

Q. And when did those negotiations take place? A. After I became president.

Q. And that would be after April 6th, 1906? A. Yes, sir.

Q. You were present at no negotiations prior to that time? A. Yes, sir.

Q. And Mr. Hogencamp did put up the $35,000 note and the two mortgages on his property, one property located at Paterson and the other at Deal Beach? A. That was prior to the negotiations at which I was present. Presumably, they were on the books before I became president.

Q. Were you present at the negotiations which resulted in the giving of the mortgage upon the Deal Beach property and upon the Paterson property? A. No, sir.

Q. Those were in the possession of the bank when you came into the bank as president? A. Yes, sir.

Q. Now, Mr. Hogencamp was asked also to give further security after you came into the bank, was he? A. Yes, sir.

Q. And what further security did he put up? A. He did not put up any further security.

Q. Did he in any other way secure the bank any further? A. No, sir; but one or two items outside of these particular items that we are debating about he was also liable for, and he paid them instead of putting up additional security.

Q. And when did he pay those items? A. The exact date I am not prepared to testify to; I believe it was some time in 1906, in the fall.

Q. You say that he was liable on these items—what do you refer to?

THE VICE CHANCELLOR: Do you mean the other items, or what?

A. I have tried to make it clear that there were some other items.

Q. Some other items on which he was liable, besides these?

THE VICE CHANCELLOR: Other than what?

THE WITNESS: Other than the ones we are debating about.

THE VICE CHANCELLOR: Well; what are we debating about?

THE WITNESS The Shaw indebtedness.

BY THE VICE CHANCELLOR:

Q. Was there anything else, as you understood it, that the bank had received additional security from Mr. Hogencamp to cover than the $12,000 Shaw note and the $13,000 Shaw note, each dated in the year 1902? A. There was some other smaller items.

Q. They were settled, you say, in 1906? A. No; that he didn't settle for—Oh, yes; that he did settle for in the fall of 1906.

Q. But leaving out those small items, as you understood it, the bank had security, when you came into the bank, from Mr. Hogencamp, to see that the bank got payment of the $13,000 Shaw note and the $12,000 Shaw note—is that correct? A. Yes, sir.

BY MR. CAREY:

Q. Now; what were the other items which he paid?

MR. LANE: I object to that as immaterial.

THE VICE CHANCELLOR: Do you mean the little ones, in the fall of 1906?

MR. LANE: Yes; I think it is immaterial and irrelevant as to what Mr. Hogencamp paid. To ask about items he actually paid is going into other affairs.

THE VICE CHANCELLOR: Let us under-

stand whether it could have any connection with this suit in any way.

BY THE VICE CHANCELLOR:

Q. See if I clearly understand, Mr. Ludlow, what your testimony up to this point has been. As I understand it, you became president on the 6th of April, 1906? A. Yes, sir.

Q. And at that time the bank had a note of $35,000 from Mr. Hogencamp and a mortgage on his Deal property, and a mortgage on his Paterson property, as security to the bank that it would receive the money on a $12,000 note made by Shaw, and on a $13,000 note made by Shaw in the year 1902? A. Yes, sir.

Q. And subsequently you taxed Mr. Hogencamp with responsibility for some other small items, and in the fall of 1906, as your memory now carries it, he paid those off; is that correct? A. Not altogether correct.

Q. State wherein I am incorrect. A. I felt, when I came into the bank, that the security which Mr. Hogencamp had there, the mortgage on his Deal property and the mortgage on his Paterson property, was not the type of security, nor ample security to cover the $25,000 that he had engaged to protect—that is, the two Shaw notes, and there were several little notes that had apparently dragged along in the bank for years, and which he felt was due to the carelessness of the management.

Q. Those were the ones that were comprised in this $35,000 of security that he gave? A. Yes, sir.

Q. Go ahead. A. He, later on, in preference to giving additional security——

Q. For those notes? A. Yes, sir—took up some of the smaller items from time to time.

Q. So after he did that he did not owe the $35,000? A. Didn't owe the full $35,000 at that time.

Q. How much was that amount? That is quite material. A. Why, I should say that was about $10,000.

Q. More than $10,000? A. About $10,000.

THE VICE CHANCELLOR: I think, if counsel presses it, he is entitled to have the details of that.

BY MR. CAREY:

Q. Can you state the details of these other items to which you have just referred, outside of the Denton and Shaw papers? A. No, sir; I cannot.

BY THE VICE CHANCELLOR:

Q. You could from the books of the bank? A. I doubt that.

Q. Do you mean to say that the bank would receive as much as $10,000 and not have any record of it? A. They might, because they were items that had been charged to Suspense Acount from time to time, by direction of the Banking Department, and there were no details in the ledgers to indicate what those items might be.

Q. But the bank would have some entry of the receipt of any sum of money, and certainly of so large a sum as $10,000, wouldn't it—never mind the details, it would have the entry? A. It would.

Q. Then you can tell something from the books of the bank, can't you? A. We might be able to.

BY MR. CAREY:

Q. Now, in what books of the bank would

the details of that transaction appear, if at all, that is, the payment of those items outside of the Shaw paper? A. Probably in the General Ledger or the General Debits and Credits.

Q. Have you those books before you? A. I don't know; there are a great many books here.

BY THE VICE CHANCELLOR:

Q. Here are the Credits for 1905, and I imagine for 1906, isn't it? It says 1906 on the back of it, is all I know about it. A. Well; it would be 1906.

Q. But you would not know what date to look under until you had the Ledger? A. Oh, no, sir. It would be a lengthy task, Judge, to work it out.

THE VICE CHANCELLOR: Well, we will work it out. What year Ledger do you want?

THE WITNESS: 1906, I guess it is, General Ledger No. 8. I think that was the last one they had.

General Ledger No. 8 being shown the witness, he stated that the book that he needed to consult was of a later date, which book was not in the court room and was sent for. In the meantime the examination was continued as follows:

THE VICE CHANCELLOR: Now, Mr. Carey I think you will be justified in inquiring about the physical piece of paper itself.

BY MR. CAREY:

Q. It has been testified that some paper was discounted amounting to $35,000, which went to balance Suspended Debt Account as it appears in Ledger No. 8, page 68. Do you know what paper that was which was discounted? A. I do not.

Q. Can you find that paper? A. I couldn't say.

BY THE VICE CHANCELLOR:

Q. Well; you testified yourself that when you came into the bank Mr. Hogencamp had already given a $35,000 note to the bank, did you not? A. Yes, sir.

Q. Where is that note? A. We still have that note.

Q. Well, that is the one Mr. Carey, I imagine, is asking about; that is down in the bank? A. Yes, sir.

THE VICE CHANCELLOR: It ought to be sent for.

MR. LANE: If it is called for. If it is, I will produce it.

THE VICE CHANCELLOR: I don't know; I suppose it ought to be sent for. If they choose to call for it, that is another matter. I shall not, of course, call for it. You understand, Mr. Carey, that if you choose to call for it, the paper will be produced.

MR. CAREY: I do not recall at the moment, whether he has testified that the $35,000 which was discounted was the note of Mr. Hogencamp.

THE VICE CHANCELLOR: The one that appeared on the Suspended Debt Account?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: He has not so testified in the hearing of the Court.

Q. Do you know whether or not that $35,000 which appears as the item Bills Discounted in

the Suspended Debt Account, in General Ledger No. 8, page 68, is the $35,000 note of Mr. Hogencamp's that you have just spoken of? A. I don't know.

Q. You do not know, then, whose paper it is that was discounted and entered in that Suspended Debt Account? A. No, sir.

Q. Mr. Ludlow, you are shown the Discount Journal, A to L., No. 12, of the Second National Bank, and your attention is directed to the items on page 174 which appear to be those for the date of Saturday, March 24, 1906. Is there any item there that apparently is connected in any way with the item in the Suspended Debt Account under date of March 24, 1906, Bills Discounted, $35,000? A. Apparently not.

Q. There appears to be only one item there, does there not, under that date, March 24, 1906, on the Discount Journal? A. Yes, sir.

Q. Now, can you make any suggestion as to where else we could look to show what those bills were that are stated to have been discounted on the 24th of March, 1906, in the Suspended Debt Account? A. No, sir.

Q. Wouldn't there be some book, equivalent to a Cash Book in a business house that would have a first entry of the introduction into the bank of any such bills? A. I do not know of any such book.

Q. Would it be possible that the details of this entry "Bills Discounted" in the Suspended Debt Account might appear at some subsequent date to March 24, 1906? A. No, sir.

Q. It should appear under date of March 24th in this Discount Journal? A. Unquestionably; Yes, sir.

Q. Examine the entries under date of March

26, 1906, which is the next entry in this Discount Journal, and see if you find this item of $35,000 about which we are talking? A. No, sir; I do not.

Q. And the next date which appears on this Discount Journal is what, after March 26, 1906? A. Thursday, March 29th, 1906.

Q. Is that item of $35,000 in the entries of that date? A. No, sir.

Q. The next preceding entry to March 26th, 1906, is found on page 173 of this Discount Journal? A. Yes, sir.

Q. And that date is Thursday, March 22nd, 1906. Look under that date and see if you find this item of $35,000? A. No, sir; I do not.

Q. Then, so far as you are able to ascertain, this item of $35,000 does not appear in this Discount Journal which you are examining now? A. No, sir.

Q. Is there any way by which you can tell what items were paid by Mr. Hogencamp in connection with the $35,000 which appears in the Suspended Debt Account, and which payments you say were made some time subsequent to April 6th, 1906? A. I want, on further reflection of this thing, to inject a correction of the impression that I gave; I want to excuse it on the ground that at that particular time the accounts of the bank and some of the loans in the bank were of such peculiar shape that what we were trying to do was to get the money. I do not think—in fact, I am positive now, on further reflection—that there were no payments made by Hogencamp on that $35,000 note in the fall of 1906. The $10,000 that I was thinking of, Judge, was a $10,000 note of Hogencamp's, a demand

note, that was paid subsequent to that. That was in addition to this $35,000 note that Hogencamp had given the bank to secure these mortgages. There was a $10,000 note of Hogencamp's that he subsequently did pay.

Q. When did he give this $10,000 demand note? A. That I don't know. It was in the bank when I came there.

Q. You do not recall the date of it? A. No, sir.

Q. Do you know whether that appears on the books of the bank or not? A. Oh, yes, sir.

Q. Can you turn to that and show us where it is? A. I think that would be in the Demand Loans (Call Loan Book shown witness.) Let me see—it would be some time in 1906 when he made the payment; I think it was in the Fall of 1906.

Q. When would it first appear in the books of the bank? A. Well; that I do not recall. It was in the books of the bank when I went there.

Q. It would appear on the books of the bank, wouldn't it, when the bank received it, the first entry? A. Oh; I should presume so.

Q. That would be the proper course? A. That would be the proper course; yes, sir.

Q. Was this note Mr. Hogencamp's personal note? A. There is the note (indicating an entry in the Call Loan Account.) It was not $10,000 at all, it was $13,500 and $3,500 was paid, leaving a balance of $10,000. (The witness indicates an item on page 52 of General Ledger No. 8, under head of Call Loans, the item reading as follows "Oct. 1, 1905, W. Hogencamp, $13,500."

Q. That is on the side of the ledger which shows that that amount of money was loaned on

that date on a note made by W. Hogencamp, is it not? A. No; that is on the other side; that is on the side that shows that Hogencamp paid the money—debited to Hogencamp, and Hogencamp paid it. But there was such a loan.

Q. Previous to that, you mean? A. Subsequent to this date when I came into the bank.

By Mr. Carey:

Q. So your testimony was incorrect when you identified this entry of $35,000 with the $10,000 note to which you formerly referred? A. Yes, sir.

Q. Will you tell us what year this is in? A. Why; it is presumably in 1905.

Q. Well; they have over here, I see "1906"—where do you get the 1905? A. Well; this is 1906. That was paid in the Fall of 1906. That is just the item I am talking about, $13,500.

Q. Then that one is in 1905, as it appears there instead of 1906? A. No, sir; 1906. This (indicating) was the place where the loans are made, on the left hand side; and on the right hand side was the place where the loans are paid by the borrowers.

By The Vice Chancellor:

Q. Will you please look back and see if you can find the charge against Mr. Hogencamp when he got that money from the bank on the $13,500 note, which you say he paid off in October of 1906? A. Under date of January 3rd, 1905, there is a charge to William Hogencamp, in Call Loans, of $13,500, page 51, but that is apparently a carry forward, that is, where they accumulate in the books and the entries become involved, they take the unpaid items, on occasions, and transfer them all under one date.

Q. Well; then look back and see if you can find it before that. A. There is another carry forward (indicating). I find it again on page 50, under date of January 3, 1905, and am of the impression that is again a carry forward, and not an original entry of the loan to Hogencamp on this note. I now find an item on page 20 of General Ledger No. 7, under head of Call Loans as follows: "Jan. 2, 1902, W. Hogencamp, $13,-500".

Q. Now, as you understand it, Mr. Ludlow, does that indicate the initial loan on a $13,500 call note of Mr. Hogencamp's? A. It would seem to; yes, sir.

By Mr. Carey:

Q. Can you tell, from the books of the bank, whose note it was which was charged up against Hogencamp on January 2nd, 1902, and which appears to have been paid October 1, 1906?

Mr. Lane: Are you referring now to the one we traced back to January, 1902?

Mr. Carey: Yes.

Mr. Lane: I object to it as immaterial and irrelevant.

The Vice Chancellor: I overrule that objection. Why, suppose it was the very note in this suit, Mr. Lane.

Mr. Lane: I understand that, if your Honor please, if it was; but it is shown that it was not.

The Vice Chancellor: No; it is not shown that it was not. How does it appear that it was not? This witness is asked if he knows whose note it was.

Mr. Lane: The transaction with re-

spect to these particular notes has been tracked back in a way that indicates that this note of $13,500, by no possibility can have any connection with this particular transaction; and I therefore object to it as irrelevant and immaterial unless it be shown that it has some connection with the transaction; and I object to it upon the ground that Mr. Ludlow can have no knowledge about it anyhow.

THE VICE CHANCELLOR: I will overrule both objections.

A. I have no way of knowing, except from the books of the bank; it would appear to be William Hogencamp's note.

Q. The custom is in making call loans, to charge against the person whose note is loaned upon, is it not? A. It is generally done that way; yes, sir.

Q. Do they sometimes, instead of charging the maker of the note which is discounted, charge the person who gets the money? A. Yes, sir.

Q. And is that an unusual custom? A. Not unusual; no, sir.

Q. Do you know what the custom of the Second National Bank was in respect to that? A. Not at that time, sir.

BY THE VICE CHANCELLOR:

Q. Well, Mr. Ludlow; let me ask you. Suppose that I brought a note brought there signed by John Jones, a call note signed by John Jones to my order, and they loaned me a thousand dollars, the amount of that note—would not the more natural way be, in the Call Loans, to charge it to me, since they gave me the money and I was the endorser of the note? A. Yes, sir.

Q. Because you would look to me first, wouldn't you? A. Yes, sir.

Q. I am your customer, and I am the person who got the money, and the chances are that you gave it to me in a way that I would deposit it back in your bank so that you would get the benefit of it? A. Yes, sir; but I say that it is generally charged to the maker, because generally the maker signs a call note.

Q. You mean there is no endorser? A. There is no endorser. If there is an endorser that borrows, of course then we charge the endorser.

By Mr. Carey:

Q. Do you know what collateral was put up with this note in question?

Mr. Lane: I suppose all of this examination with respect to this note, will be taken over my objection?

The Vice Chancellor: Oh, yes.

Mr. Lane: And I now object on the further ground that so far as this collateral is concerned it is irrelevant and immaterial, until it is shown that this note has some connection with the transaction in question.

The Vice Chancellor: I overrule the objection.

A. No, sir.

Q. What books of the bank show whether or not collateral was put up with this note? A. I do not believe these books would show.

Q. Would any books of the bank show? A. I don't know of any that would.

Q. In making call loans, didn't the Second National Bank keep a record of the collateral

put up with these notes? A. Some such records they kept in the form of loose memorandums, which were destroyed.

BY THE VICE CHANCELLOR:

Q. Is there any record that you know if, excepting the entries in the General Ledger under the head of Call Loans,, which would enable us to ascertain whose note this was that William Hogencamp obtained $13,500 upon on the 2nd day of January, 1902? A. I don't know of any, your Honor.

Q. Have you any personal recollection of, or concerning this note which was not paid off until after you were president of the bank, and of which you said you had personal knowledge of its being paid off? A. Yes, sir.

Q. What is your personal recollection as to whose note it was? A.Oh; that was William Hogencamp's note, unsecured.

Q. It was William Hogencamp's own note, was it? A. Yes, sir.

Q. And unsecured? A. Yes, sir; it had the endorsement of Leonard Richards.

BY MR. CAREY:

Q. Was this note paid to you, Mr. Ludlow?

THE VICE CHANCELLOR: He means did you individually act for the Bank in receiving the money or the check?

A. Yes, sir.

Q. And what did you do with the note? A. I think I handed the note back to Leonard Richards after Mr. Hogencamp had scratched his name off of it.

BY THE VICE CHANCELLOR:

Q. Had scratched Mr. Hogencamp's name off of it? A. Yes, sir.

BY MR. CAREY:

Q. Did you see any of the notes which preceded the one which was paid to you in October, 1906? A. No, sir.

Q. Can you suggest any books of the bank which might be investigated to ascertain whether or not there was any collateral put up with this note, or with any note which preceded it? A. No, sir.

Q. Who, of the bank, would know whether the bank has a record of collateral which may have been connected with this note? A. I would know.

BY THE VICE CHANCELLOR:

Q. That is the note which was paid off on the 1st of October, 1906, you are talking about now? A. Yes, sir.

BY MR. CAREY:

Q. Would the cashier of the bank also know about such books and such records pertaining to collateral? A. Yes, sir; he might know.

Q. Whose business would it be to know? A. At that time it was my business to know.

Q. And was it the business of anybody else to know? A. Not particularly; no sir—the general bookkeeper.

Q. And who was the general bookkeeper? A. Mr. Morrow.

Q. Is he now connected with the bank? A. He is dead.

Q. And whose business, other than Mr. Mor-

row's and yours, would it be to know? A. I don't know of anyone.

Q. Did not the cashier have general knowledge of those books? A. General knowledge, yes, sir; but I took charge of the loans when I took charge of the Second National Bank.

Q. Do you know of any other security which Mr. Hogencamp gave the bank beside the Shaw notes, the Shaw Mortgage on the Stable Property in Jersey City, the Denton Mortgage on the Lakewood property, and the mortgage on Mr. Hogencamp's Paterson property and his Deal Beach property? A. Well; we did not take the Shaw mortgages or the Denton mortgages as collateral especially—in form, but not in fact.

MR. CAREY: I object to the answer.

THE VICE CHANCELLOR: If you have incorrectly stated the facts in your question, he is entitled to a question that states the facts. The witness may not be permitted to correct what you have said, unless he is asked to; but he may say that your question so incorrectly states the facts that he cannot answer it. I will permit the witness to answer that way, if that is the fact. He certainly is entitled to say "I cannot answer that question because it does not correctly assume facts."

(To the witness.) Is that correct?

THE WITNESS: Yes, sir; in the way you put it, I cannot answer it.

THE VICE CHANCELLOR: All right; he says that as the question incorrectly assumes facts he cannot answer it.

Q. What security did the bank get from Mr. Hogencamp as against that $35,000 note which

you say Mr. Hogencamp gave to the bank? A. A $35,000 mortgage on his property at Deal, and a $10,000 second mortgage on his Paterson property; I think it was $10,000.

THE VICE CHANCELLOR: That is the previous testimony, so I guess that is right.

Q. Anything else? A. That is all.

Q. Did not Mr. Hogencamp, about the time of the transfer of the Lakewood mortgage and the Shaw Stable mortgage, also transfer some other property to the bank?

THE VICE CHANCELLOR: Real estate, do you mean?

MR. CAREY: Real or personal property.

A. He may have transferred to the bank some real estate that the bank owned in Ridgewood and at West Orange. The bank had that in its possession, physical possession, and I think in its name, at the time I took charge of the bank. That property has since been sold.

Q. Was there any personal estate transferred at that time from Mr. Hogencamp to the bank, other than what has been testified to? A. Not that came into my possession.

BY THE VICE CHANCELLOR:

Q. Well, to your knowledge? A. Nor to my knowledge.

BY MR. CAREY:

Q. Did Mr. Hogencamp transfer to the bank, at about that time, some interest which he had in the Elberon Water & Light Company, or its securities? A. Some interest that he had?

THE VICE CHANCELLOR: Yes, sir; that is the question.

A. No, sir; no interest that he had.

THE VICE CHANCELLOR: That is what he means—HE individually.

A. No, sir. I want to explain that, Judge, I want to be quoted correctly——

THE VICE CHANCELLOR: Yes.

A. Mr. Hogencamp held in his name, as I recall it, a certificate of a committee, represented by the Columbia Trust Company of New York, for the bondholders of the Elberon Water & Light Company, which represented securities in the form of those bonds, that were pledged with the bank as collateral to loans, and that certificate was assigned by Mr. Hogencamp in blank, to the bank, that being a form adopted by banks very often in participating in any reorganization, of having the certificate entered in an individual name rather than in the name of the institution.

THE VICE CHANCELLOR: But what Mr. Carey has asked you was whether or not, at the time he has called attention to, Mr. Hogencamp, owning, as an individual, an interest in this company that he has named, transferred what he owned as an individual to the bank; that is what he asked you.

THE WITNESS: No, sir.

THE VICE CHANCELLOR: The other is not pertinent nor relevant, unless he asked you about it. He only now asks about Hogencamp's own personal interest.

Q. Did not Mr. Hogencamp own some individ-

ual interest in the certificate which was standing in his name, and of which you have spoken? A. Not that I have been aware of.

Q. Didn't he claim to own some individual interest in that certificate? A. No, sir.

BY THE VICE CHANCELLOR:

Q. Was it afterwards commuted into bonds, this certificate? A. It was afterwards—

Q. Why don't you answer my question yes or no? A. Yes, sir.

Q. Now; did Mr. Hogencamp get any of those bonds because he claimed individually to have owned them? A. No, sir.

BY MR. CAREY:

Q. In case Mr. Hogencamp's indebtedness to the bank should be paid, would he not be entitled to some of the bonds which were delivered on account of that certificate? A. No, sir.

Q. Do you know of Mr. D. W. McCrea holding a certificate of interest in this Elberon Water & Light Company which he got from Mr. Hogencamp? A. I believe he does.

Q. Does he hold it now? A. That is with the Second National Bank as collateral security on a note of D. W. McCrea, on which we have taken judgment.

Q. And does the bank also hold that as collateral against indebtedness of Mr. Hogencamp? A. No, sir.

Q. Whose property was that certificate evidence of?

MR. LANE: I object to that.

Question withdrawn.

Q. Do you know whether or not Mr. Hogen-

camp had or has an interest in the property represented by that certificate? A. No, sir.

BY THE VICE CHANCELLOR:

Q. You do not know? A. No, sir.

BY MR. CAREY:

Q. Do you know whether or not the bank is the owner of the rights evidenced by that certificate?

MR. LANE: I object to that as immaterial, irrelevant and not proper cross examination.

THE VICE CHANCELLOR: I cannot say that it is not proper cross examination, because Mr. Ludlow, under your direct questions, as I recall it, was called upon by you to testify to the security which Mr. Hogencamp had given to the bank for the $35,000, and surely that opens him up to cross examination as to anything which was given to the bank as security for that.

MR. LANE: Certainly.

THE VICE CHANCELLOR: Therefore, I cannot say it is not proper cross examination. I will overrule the objection.

Q. (Question repeated.)

THE VICE CHANCELLOR: He means the ones you have been talking about, which was put up with a note of McCrea's, and he wants to know whether you now know that that has been sold out and the bank has bought it in?

A. I do not think that collateral was sold out.

THE VICE CHANCELLOR: The bank still holds it?

THE WITNESS: I think the bank still holds it as collateral.

Q. Did the bank claim that it was entitled to hold that certificate, put up with the note of McCrea and which was in the name of Mr. Hogencamp, for any purpose other than to secure the McCrea note? A. I have not testified that the certificate was in the name of Mr. Hogencamp, that I know of.

Q. Do you know whether it was or not? A. I do not believe it was.

Q. In whose name was it? A. I think it was in Mr. McCrea's name.

BY THE VICE CHANCELLOR:

Q. Initially? A. Yes, sir.

Q. You see, you have said, when this matter was first broached to you, that you knew of a certificate which Mr. McCrea had gotten from Mr. Hogencamp? A. Well, he may have gotten the certificate from Mr. Hogencamp, but later on transferred it to his own name.

Q. That is all the Court had in mind, that you evidently knew that it did come from Mr. Hogencamp. A. Then I misunderstood the question. I don't know where it did come from.

Q. That is the way you answered it; the question was: "Do you know of a certificate of the Elberon Water & Light Company which Mr. D. W. McCrea got from Mr. Hogencamp?" and you answered "Yes." A. No, sir——

Q. Well, I am telling you what he swore to. A. I am swearing that I misunderstood the question, sir.

BY MR. CAREY:

Q. Do you know, Mr. Ludlow, of the certi-

ficate which was deposited by Mr. McCrea for his own note—deposited with the Second National Bank by Mr. McCrea? A. As collateral for his own note, yes, sir.

Q. Now, do you know in whose name that certificate was at the time it was delivered to the Second National Bank by Mr. McCrea? A. I do not recall.

Q. Has the name been changed since it was delivered to the Bank? A. I do not recall.

Q. Could you tell by an examination of the certificate itself? A. I could; yes.

Q. You say that certificate is now in the possession of the Second National Bank? A. What was represented by that certificate is.

Q. And that is now bonds? A. Yes they are bearer bonds.

Q. For how much? A. I think they are five thousand dollars. It was a ten thousand dollar certificate, and under the Plan of Reorganization it represented five thousand dollars in value, and bonds for the value it represented were given in place of the ten thousand dollar certificate, and the bonds are for five thousand dollars.

BY THE VICE CHANCELLOR:

Q. The bonds contain no names, I presume, of any payee? A. No, sir.

BY MR. CAREY:

Q. Now, subsequent to the time when Mr. McCrea delivered the certificate to the Second National Bank as collateral for his loan, did not the Second National Bank claim to hold that certificate not only as collateral against Mr. McCrea's note, but also as collateral against some indebtedness of Mr. Hogencamp? A. No, sir.

Q. Did the bank not claim to have the right to hold that certificate not only as collateral against McCrea's note, but also as the property of the Second National Bank? A. No, sir.

Q. Never made any such claim? A. Not that I can recall; I do not see how they could.

Q. Do you know whether or not the money which resulted from the discount of the McCrea note went to the credit of Mr. Hogencamp?

MR. LANE: I object to that as immaterial and irrelevant. Now, what we are doing, if your Honor please, is re-trying the case against Mr. McCrea which was tried in the Circuit Court two years ago, which has absolutely no connection with this transaction at all, and I object to it as irrelevant and not cross examination.

THE VICE CHANCELLOR: How is that material or relevant, Mr. Carey? There being no testimony that this security put up with the McCrea note is held by the bank in any way as against Hogencamp, I do not see the relevancy or materiality of who got that money, or anything about it. The only possible relevancy of any testimony about the McCrea note, or who got the money, would be if you had established that the bank made any claim on this collateral for any other debt or note than this one of McCrea's. You have sought to do that by this witness; he is the only one who has testified about it excepting Mr. Hogencamp; now, the testimony at the present time, both of Mr. Hogencamp and of this witness, is that there is not now and there never was held

for the Second National Bank any securities, direct or indirect, of the Elberon Water & Light Company to which Mr. Hogencamp had any right whatsoever. So I am going to rule that out now as immaterial and irrelevant.

Q. Mr. Ludlow, what has been paid by Mr. Hogencamp, or by anybody for him, on account of the mortgage upon the Deal property and the Paterson property? A. Mr. Hogencamp paid interest on those mortgages up to about six months, and he has not paid any interest since then.

Q. The first six months subsequent to their execution? A. I think about six months; it may have been a year.

By the Vice Chancellor:

Q. They are still held by the bank? A. Yes, sir.

Q. And nothing has been paid on account of principal, as you understand it? A. No, sir.

By Mr. Carey:

Q. What payments, other than you have testified to, has Mr. Hogencamp made to the bank since you have become connected with the bank? A. I do not recall any others.

Q. Would you know of payments made to the bank by Mr. Hogencamp, if they were made? A. Yes, sir.

Q. And you say you "do not recall any"—do you mean that there may have been some made which you do not recall now? A. I do not believe there were any; I don't know whether any could have been made.

Q. Do you know whether interest has been

paid on this $35,000 of bills discounted which appears in the Suspended Debt Account, to balance that account? A. No, sir.

Q. My question is do you know? A. No, sir.

Q. You don't know? A. No, sir.

BY THE VICE CHANCELLOR:

Q. Let me see if I can put together two things you have said and reconcile them. A minute ago you said that Mr. Hogencamp, since you had become President of the bank, had paid either six months or a year of interest on the notes secured by the mortgage? A. Yes, sir.

Q. Now then, is it not your understanding that Hogencamp's mortgages on his Deal property and Paterson property secured this very thirty-five thousand dollar note that Mr. Carey is talking about to you? A. He is speaking of this entry in the ledger here of $35,000 made before my time, that I know nothing about.

Q. That is, the mortgages were made before your time. A. Well; I know it was the interest on those mortgages; but that particular $35,000 item I don't know what it was.

Q. But your answer was "on the notes"—you did not say mortgages, you said "notes". A. I think I said on the mortgages, Judge.

(The stenographer's minutes of the testimony of the witness upon this point were read at the direction of the Vice Chancellor.)

THE VICE CHANCELLOR: I find that I was mistaken; the minutes do not bear out my recollection.

BY MR. CAREY:

Q. The mortgage on the Paterson property and

the Deal property, as I understand it, secures the $35,000 Hogencamp note, is that right? A. And this Shaw mortgage.

Q. Does it secure the $35,000 Hogencamp note? A. It secures the contingency as to the non-payment of this Shaw mortgage.

BY THE VICE CHANCELLOR:

Q. But if the Shaw mortgage is paid, that reduces the amount that Hogencamp owes the bank by $13,000, doesn't it? A. Yes, sir.

Q. And if the Denton mortgage is paid, that reduces it by $10,000 more, don't it? A. Yes, sir.

Q. So that the mortgages which he gave were really to secure the $35,000 that he gave his note for, which note was to secure the payment of these Shaw notes? A. Yes, sir.

BY MR. CAREY:

Q. Now, the interest was paid on the mortgage and, consequently, upon this $35,000 note—is that right? A. Yes, sir.

Q. And you don't know whether that interest payment was a payment of interest on the $35,000 notes which appear in the Suspended Debt Account? A. I could not until I identify that particular item.

Recess until two o'clock, P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock, P. M.

SAMUEL LUDLOW, JR., recalled.

BY MR. CAREY:

Q. Have you identified that item, Mr. Ludlow? A. No, sir.

Q. Have you made any effort to, since the adjournment? A. No, sir.

Q. Mr. Ludlow, do you have any present knowledge of payments made by Mr. Hogencamp to the bank from September, 1905, on to the present time, other than what you have already testified to? A. No, sir.

Q. Has your attention been called to payments made by Mr. Hogencamp to the bank during the month of September, 1905 ? A. No, sir.

Q. Or during the month of October, 1905? A. No, sir.

Q. Or any time after that up to October, 1906? A. Payments made by Hogencamp.

Q. To the bank—other than the ones you have testified to? A. No, sir.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Ludlow, when you came to the bank as president, how was this $35,000 note of Hogencamp's being held? A. It was being carried as a——

MR. CAREY: I do not know what that question means, your Honor.

THE VICE CHANCELLOR: I do not, either.

MR. CAREY: I object to it as indefinite.

THE VICE CHANCELLOR: I shall sustain the objection until the question is more specific; it does not show whether he means "carried physically; in whose possession or hands", or it does not show whether he means "upon the books of the bank", or what; so until he makes the question more specific I shall overrule it.

Q. It what way was it considered at that time, and subsequently, by the bank?

MR. CAREY: I object to as to how it was considered.

THE VICE CHANCELLOR: I sustain the objection; he can state facts with respect to it, but he cannot state considerations.

Q. As a fact, how did the bank, after you came to the presidency, hold this Hogencamp note of $35,000?

MR. CAREY: If the Court please, I object to that, also, on the ground that it is indefinite and uncertain and apparently calls for a conclusion.

THE VICE CHANCELLOR: Yes; I think that question is objectionable.

Q. Is there any reason why the $35,000 Hogencamp note should not appear in the Discount Journal, or in the other books of the bank?

MR. CAREY: I object to that as irrelevant and immaterial.

THE VICE CHANCELLOR: I overrule that objection; it calls for a yes or no answer; I will permit the witness to answer yes or no, or that he don't know, but will not

permit him to enter into the explanation until you have an opportunity to object to the question, Mr. Carey, which is merely now as to whether he knows, or not.

A. Yes.

Q. What is it?

MR. CAREY: Now, I object to the question, on the ground that it is irrelevant and immaterial in this case; and the reasons which the bank might have had for dealing with this paper in one way or another cannot effect the rights of the defendants.

THE VICE CHANCELLOR: I think that is true, Mr. Lane.

MR. LANE: I think it is very relevant and material.

THE VICE CHANCELLOR: I tihnk that the facts are relevant; I do not agree with Mr. Carey in his objection if his objection is that the facts are not relevant or material, as I am inclined to think they are; but you have asked this witness to indulge in reasoning about things, and I do not know that witnesses' reasonings are usually evidential, and I do not think in this instance they are at all evidential. I think that you can elicit whatever information this witness has of facts concerning this $35,000 note of Hogencamp's; but I do not thing his reasoning about it would be probative in this suit. I shall sustain the objection.

Q. You have found, have you not, Mr. Ludlow, that the Hogencamp note does not appear upon

the Discount Journal of the bank? That has been determined, has it not? A. Yes, sir.

Q. If the bank treated the Hogencamp paper as an original obligation upon the part of Hogencamp, and a primary obligation on his part, would it, or would it not, appear in the Discount Journal?

MR. CAREY: I object to that, also, as calling for a conclusion, and calling for the motives which induced the bank to do certain things, or to omit to do certain things.

THE VICE CHANCELLOR: I cannot see that this witness is being used now as any other than an expert witness as to what he thinks a bank ought to do to put on its books if a transaction is one way, or what it ought to put on them if the transaction is the other way. He has disclaimed any personal knowledge before April 6, 1906. The so-called Hogencamp note that you have talked about has not been exhibited in this suit at all. It does not appear upon any books of the bank anywhere, so far as any testimony before me shows. If there is such a note in existence, it has not been produced, so we do not know its date. If there is such a note in existence and of a later date than April 6, 1906, and this witness has personal knowledge of the facts, I am going to permit you to elicit them from him. If it is of a date prior to April 6, 1906, this witness says that he has no personal knowledge whatever concerning the transaction. I am not going now to permit you to elicit expert opinions from him as to what he thinks the

bank ought to have done in making entries about this note, nor what inferences he would draw from its failure to make such entries. I am inclined to think that such testimony, in any event, would be improper to receive; and certainly in this suit it would be, because we have found constantly throughout this trial that all sorts of things were entered in these books, and omitted to be entered, without any regard to correct bookkeeping methods. Mr. Hogencamp, time and again, has said that why certain entries were not made and why certain entries were made he could not tell—he either found them and could not explain them, or did not find them and could not explain why he could not find them—that is to say, why they were not there. That is my ruling.

Q. After you came to the bank, did the bank treat the Hogencamp note of $35,000 as a primary obligation upon the part of Hogencamp, or in some other way; and if in some other way, in what way?

MR. CAREY: I object to the question. It calls for a conclusion, and calls for matters concerning which the witness has no personal knowledge.

THE VICE CHANCELLOR: I cannot sustain the latter part of that objection, because he may have personal knowledge as to how they treated it after he came into the bank.

MR. CAREY: Well, "how they treated it" certainly calls for a conclusion.

THE VICE CHANCELLOR: But you said

"because it did not call for personal knowledge"—now, a question which asks this witness how they treated the note after he became president does call for his personal knowledge; so that part of your objection I do not think is well taken. Leaving aside for the moment whether or not it is a conclusion, I will call counsel's attention to the fact that it does not appear that when this witness came to the bank this note of which you speak was in evidence.

MR. LANE: I said "after you came to the bank".

Q. (Question reepated.)

THE VICE CHANCELLOR: There is no evidence before me that the note was created after he came to the bank. I do not know when the note was created. I have, so far, no knowledge of whether the note was in the bank when he got there, or whether it was negotiated during his presidency; and he said he had charge of the note business, and if it was done after his presidency began the chances are that he knows about it personally, and what I think you ought to elicit is the facts that this witness has concerning these notes, and not ask him to draw conclusions as to the matter of how they treated it. If you mean by "how they treated it" the facts, of course I am willing to have him answer it.

Q. Was the note in existence, at the time you came to the Bank, for $35,000? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. It was there when you became President, was it? A. Yes, sir.

Q. You saw it yourself, physically, personally? A. Yes, sir.

BY MR. LANE:

Q. After you became President how was that note treated by the Bank—I mean, now, with respect to the facts—whether they treated it as a primary obligation, or in some other way?

MR. CAREY: That calls for a conclusion —"whether they treated it as a primary obligation, or in some other way." If there is any probative force to testimony which the counsel seeks, it must be from a statement of what was done with the note, and not a statement of a conclusion of the witness, whether they would imply a primary or a secondary obligation.

THE VICE CHANCELLOR: I agree to that; I think that objection is well-taken. I also think that what they did with it after it was created might not be relevant at all, as to whether they considered it as a primary or some other kind of an obligation. He does not pretend to have any knowledge of the contract which was made at the time that the note was given; and if that contract was that the note was to be treated as X, nothing that the Bank did thereafter would transmute that X into a Y—that is to say, if they were to treat it in one way by the contract between the parties they could not afterwards alter the terms of that contract by any *ex parte* treatment that they might make of it. I shall overrule

the question; I do not think it calls for information, that is to say, for facts; that it calls for conclusions of the witness.

MR. LANE: I shall not ask Mr. Ludlow any more questions.

WILLIAM HOGENCAMP, recalled.

RE-DIRECT EXAMINATIONS resumed by Mr. Lane: Lane:

Q. Now, at the time you gave the $35,000 note to the Bank, do you remember the time, about, when that was given? A. It was in the latter part of 1905, as I recollect it.

Q. The latter part of 1905? A. I think so.

Q. Did you have any conversation with the officers of the Bank before you gave that note?

MR. CAREY: If the Court please—

THE VICE CHANCELLOR: I am going to let him answer yes, or no; and then when he asks what it was for (if he does ask it), any objection that you have to make will be heard.

A. Yes, sir.

Q. What were those conversations?

MR. CAREY: I object, in the first place, to furthere examination with respect to a note which they do not produce; and, in the second place, with respect to a conversation which took place between the officials of the Bank and Mr. Hogencamp in the abence of the defendants.

THE VICE CHANCELLOR: I will entertain the first part of your objection first and

will deal with that first: Mr. Lane, why is not that a proper objection, that you are now talking about a paper writing which, so far as we know, is in existence and can be produced, and you are asking the witness to talk about that in the absence of the paper which, so far as we know, is in your possesion this minute?

MR. LANE: I am not asking the witness to talk about it, I am asking the witness to give the conversations. I am not asking the witness for the contents of it, or anything about it, except that there is in existence such a paper writing—

THE VICE CHANCELLOR: Well, that is just it—you say there is in existence such a paper; Now, if there is, why ought not that to be produced?

MR. LANE: I know of no rule of law which requires me to produce the paper writing because of the mere fact that such a paper writing exists.

THE VICE CHANCELLOR: How can you vindicate the giving of conversations which led up to a thing without we have the thing before us which was led up to? Suppose he produces this thing you call a note, and it turns out not to be a note at all, but turns out to be something radically different? You are now asking him to give his recollection of conversations that led up to something which is in writing, and Mr. Carey says that until you prove that there was something in writing that the conversations led up to, how are the conversations material?

MR. LANE: We have proved that there was something in writing; I do not understand that there is any rule that requires me to prove the existence of the written paper by the production of that paper, I cannot prove the contents of a written paper, if objection is made in time, without the production of the written paper, probably; but in this case it has been proven that there was such a note for $35,000 given, and the contents of the note have been given to the extent of showing that it was for $35,000 without objection. We, therefore, have in this case at this time the fact that such a note was given.

THE VICE CHANCELLOR: I do not know that we have any evidence that the note that you speak of was given. There is evidence that at some time Mr. Hogencamp did give a note, a $35,000 note—

MR. LANE: For a purpose, which is in evidence.

THE VICE CHANCELLOR: Yes, if you choose, for a purpose, which purpose has been testified to; but I do not know that I could find that the note that he says he gave in the latter part of 1905 was that note which has been testified to heretobefore: In fact, this is the first idea that I ever had that it was not the note dated March 24, 1906, and credited to the Suspended Debt Account under that date; I had always thought heretofore that that was the note.

MR. LANE: That is the note, as a matter of fact.

THE VICE CHANCELLOR: Now you are

asking him about a note which he places almost a year earlier than that; and upon that note I do not know that we have had any testimony. I shall rule this: That you will not be permitted to examine this witness about conversations that led up to his giving what he has described as a "note" unless you either now produce the "note" account for its absence, or promise the Court that you intend to do so. I do not think it is fair nor proper to have oral testimony of so important a note in this case, or about a written paper designated as a "note," without producing it that we may see whether it is a note. It may not be a note at all, it may be something else. We have got here a written paper which this witness has called at one time a "note," and at another time a "guarantee;" in form (it has not been admitted in evidence, but the Court read it) it is certainly not a note, although he referred to it as a "note". That is my rulling.

Q. Mr. Hogencamp, there has been testimony that there was a mortgage held by the Bank for, I think $24,000: Will you turn to General Ledger No. 7, to the Mortgage Account? A. I have done so.

Q. I want the Real Estate Account? A. (The witness now points to the first item in the right hand column of page 6, reading as follows: "Bonds & Mortgages. 125 St. N. Y., 1900. Dec. 26, 24,000," on the left hand side of the line. On the right hand side of the line "1901, March 21, 24,000."

Q. Now, I ask you, Mr. Hogencamp, whether the Bank advanced $24,000 on account of that

mortgage, and to whom? A. They advanced $24,000 on that mortgage to Henry M. Denton.

Q. In whose account did it go first, do you remember, Mr. Hogencamp? I show you a book entitled "Debits, No. 59, 1900" "Second National Bank," and refer you to an item there of the 125th Street Mortgage, $24,000, under date of December 26, 1900, and ask you what that refers to? A. It is a debit to Bonds & Mortgages, 125th Street, New York, $24,000.

Q. Well, what does it mean? A. It was charged to Bonds & Mortgages.

Q. Was that money paid out by the Bank? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. On account of this bond and mortgage that is described there? A. Yes, sir.

BY MR. LANE:

Q. Now, I show you check, dated December 20, 1900, "Pay to the order of Henry M. Denton, Twenty four thousand dollars, signed "W. Hogencamp," purporting to be endorsed by Henry M. Denton, and ask you whether that is the check that paid for that $24,000? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. Is that Mr. Denton's signature on the back? A. Yes, sir.

MR. LANE: I offer that check in evidence.

THE VICE CHANCELLOR: Is there any objection.

MR. CAREY: I presume that it is admissible.

THE VICE CHANCELLOR: It is admitted, and is now marked Exhibit C, 41. It is a

check on the Second National Bank of Jersey City, signed "W. Hogencamp," to the order of Henry M. Denton, dated December 20, 1900, for $24,000, and bears a Revenue stamp of two cents, cancelled apparently in Mr. Hogencamp's handwriting, "Dec. 20th." It bears the endorsement of Henry M. Denton.

BY THE VICE CHANCELLOR:

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

BY MR. LANE:

Q. Now, will you turn to your Individual Ledger Account and show the withdrawal of that sum from the Bank? A. Yes, sir (The witness turns to Individual Ledger No. 16, A. to L., page 671, account of William Hogencamp, and indicates an item which reads "Dec. 21, 1900, 24,000," on the withdrawal side, with a corresponding item on December 26th of 24,000 on the side that it was put in, with a pencil notation in front of it "B. & M."

Q. Now, the $24,000 that was deposited in your account on December 26th by whom was that money advanced? A. It was the proceeds of that bond and mortgage.

BY THE VICE CHANCELLOR:

Q. I know, but who produced the proceeds; where did they proceed from; how did it get to you so it got into your bank account is what Mr. Lane wants to know? Is not that it, Mr. Lane?

MR. LANE: Yes, sir.

A. I got it from Mr. Denton, if I recollect it.

Q. Mr. Denton gave you this $24,000 that you

gave him on December 20, 1900? A. No, sir, gave me the bond and mortgage.

Q. Well, how did you get the money on it? When he gave you the bond and mortgage, how did you get the $24,000 on it? A. The Second National Bank gave me credit for $24,000.

Q. Then you got the money? A. Yes, sir.

Q. And this check, Exhibit C, 41, is the transfer by you to Denton of that $24,000 which you had gotten from the Bank? A. Yes, sir.

BY MR. LANE:

Q. Will you look in Mr. Denton's account, and see if that $24,000 went through his account? A. Yes, sir (witness calls attention, in Individual Ledger No. 16, A. to L., page 338, in the account headed "Henry M. Denton," to an item on the deposit side of this account, under date of December 24, "24,000.")

Q. Now, will you turn to your General Ledger Account of this real estate entry, and tell us how that mortgage of $24,000 was paid back to the Bank?

THE VICE CHANCELLOR: He cannot tell by the real estate entry, because that simply reads "March 21, 1901, 24,000."

Q. Show it with the General Debits and Credits?

BY THE VICE CHANCELLOR:

Q. The real question is this: The first item that you identified in the Real Estate Account, page 6, of General Ledger No. 7, shows that this $24,000 that the Bank advanced on this mortgage was paid back to the bank on the 21st of March, 1901: Now, Mr. Lane wants you to show from the other books where the money came from

that paid that back? A. I refer to book entitled "Credits, No. 44," for the year 1900; it is not paged; under date of Thursday, March 21, 1901. (The witness points to an item as follows: "Bond & M., 125 St. N. Y., H. M. Denton, 24,000.")

By Mr. Lane:

Q. Now, what is this item on General Debits, March 21, 1901 (referring to Debits book No. 59, not paged, but under date of "Thursday, March 21, 1901")? A "Bonds & Mortgages. Mortgage on Beard Bldg, Liberty & Cedar Sts., N. Y., 14,000."

By The Vice Chancelor:

Q. Has that any connection with this $24,000 bond and mortgage on 125th Street.? A. Well, it was a part payment. It was received in part payment of that $24,000 mortgage.

Q. Then it had a very distinct connection with it? A. Yes, sir.

Q. Well, where did the other $10,000 come from? You credited him on that date with paying the whole $24,000, and you have only showed here $14,000? A. Without looking it up I could not say now.

Q. But it came from Denton, though, didn't it? A. It came from Denton.

By Mr. Lane:

Q. Now, does that mortgage appear on your Real Estate Account there, that $14,000 mortgage? A. It does (turning to General Ledger No. 7, page 6, and indicating an item as follows:) "Bond & Mortgages, Beard Bldg., Liberty & Cedar Sts., N. Y.," under date of March 21, 1901, "Received the Bond and Mortgage of $14,000," and, under date of August 5, 1901, "14,000 in payment of this bond and mortgage."

Q. Will you turn to the Credits again, and tell me how that mortgage was paid off? A. The book entitled Credits, No. 44, for 1900, under date of "Monday, Aug. 5, 1901," has the following item: "Bond & Mortgage, Beard Bldg. Cash, 11,500. Bond & M. 48th St. N. Y., 2,500," total "14,000."

Q. Does that $2,500 mortgage appear on the Real Estate Account?. A. It does; on General Ledger, No. 7, page 6, as follows: Bond & Mortgage, West 48th St. N. Y.," on the side showing it was received "Aug. 5, 1901, 2,500" on the side showing its payment, "Feb. 13, 1903, 2,500."

Q. On August 27th, 1902, when the Shaw note for $13,000 was given, and the Shaw note for $12,000, you had them—

THE VICE CHANCELLOR: There is no evidence that the Shaw note for $12,000 was given on the 20th of August, 1902.

Q. On the 27th day of August, 1902, when you had in your possession the Shaw note for $13,000 and the Shaw note for 12,000, dated June 30th, 1902, you also had the bond and mortgage of Denton for $12,000, and the Hanford bond and mortgage for $12,000 had you not—or just prior to those two notes being given?

MR. CAREYS Objected to as leading.

THE VICE CHANCELLOR: Well, I guess it is; it calls for a yes or no answer. I sustain the objection.

Q. When one of the Shaw notes was increased from $12,000 to $13,000—

THE VICE CHANCELLOR: There is no use starting that way, because there is no such evidence. Don't you see the uncontradicted evidence is that down to the 27th of August,

1902, so far as the books show, there was only one note of Shaw's, for $24,000.

Q. When you increased the loan to Shaw from $24,000 to $25,000, on or about August 27th, 1902, what did you do with respect to the two mortgages that you then had? A. The Shaw mortgage was increased from $12,000 to $13,000.

Q. For what purpose? A. To furnish adequate security for the $13,000 part of the transaction.

By The Chancellor:

Q. Do I understand you to say that previous to the 27th of August, 1902, you had any mortgage in your possession signed by Shaw? A. Yes, sir; I think so.

By Mr. Lane:

Q. Well, do you mean that? A. Well either Shaw or Hanford; I don't know; Hanford, probably it was; I am not positive about that.

Q. The Shaw mortgage for $13,000 was substituted for the Hanford mortgage of $12,000, was it not?

Objectied to as leading. Question overruled.

Q. Why was the Shaw mortgage of $13,000 given? A. To secure that part of the indebtedness of Shaw.

Q. What part of the indebtedness of Shaw? A. $13,000.

Q. Did you have a conversation with Mr. Denton before the Shaw mortgage was given?

The Vice Chancellor: By the "Shaw mortgage" he means the mortgage for $13,000, dated August 27th, 1902, don't you, Mr. Lane.

MR. LANE: Yes, sir.

MR. CAREY: I object to that as irrelevant to the issues in this cause.

THE VICE CHANCELLOR: Well, I cannot tell yet; I will have to overrule your objection. If it turns out to be irrelevant it cannot do you any harm; and this case has so many points in it that I cannot run the risk of saying it is irrelevant.

A. Yes, sir.

Q. With respect to what? What did you talk to Denton about, in other words, is what I want to know?

THE VICE CHANCELLOR: (To the witness) Do not tell us the conversation, just what it was about.

A. About these Shaw notes and the Shaw security.

BY THE VICE CHANCELLOR:

Q. Had you any securities at that time from Shaw? A. No—yes, I did.

Q. What did you have? A. I had the Hanford Mortgage.

Q. Did Shaw give you that? A. It was given to me by Mr. Denton.

Q. I did not ask you that; you said "the Shaw securities," I want to know whether, before the 27th day of August, 1902, you had any securities that were deposited with you by Mr. Shaw? A. Yes, sir.

Q. What did you have? A. I had the mortgage on the Lakewood property.

Q. Was that deposited with you by Mr. Shaw? A. Yes, sir; and I had the mortgage on the Stable property.

Q. And that was deposited with you by Mr Shaw, was it? A. Yes, sir.

Q. Now, you are not getting mixed up between Shaw and Denton, are you? A. No, sir.

Q. Your testimony heretofore has been that Mr. Denton deposited those with you? A. Well, Shaw through Denton; I may vary it that way; but it was for security of Shaw's obligation.

By Mr. Lane:

Q. Who handed you the Denton Mortgage and the Hanford Mortgage—Denton or Shaw?

Mr. Carey: I object to that "Denton or Shaw,"—let him state.

The Vice Chancellor: Yes.

Q. Well, who handed you the mortgages?

By The Chancellor:

Q. Who gave to you—that is, what person handed over to you—the Denton Mortgage of $12,000 on the Lakewood property, and the Hanford Mortgage on the Stable property in Jersey City? A. I think Mr. Denton did.

Q. And, as a matter of fact, was not that long before Shaw had any notes in the Bank whatever? A. I do not recollect now. In 1902? Let me think. I do not recollect the date we got the first Shaw note.

By Mr. Lane:

Q. What was the conversation you had with Mr. Denton?

The Vice Chancellor: When?

Q. When did you have this conversation with him? A. Just prior or at the time of the increase of that mortgage from $12,000 to $13,000, and the

increase of the notes from $24,000 to $25,000—just before, or at the same time.

Q. Now, what was the conversation? A. Mr. Shaw wanted a thousand dollars more for some purpose or other—wanted to increase the indebtedness a thousand dollars; and I wanted additional security and more security, rather—yes, more security; and at that time the mortgage was changed from $12,000 to $13,000.

Q. And what was done with the $12,000 mortgage?

THE VICE CHANCELLOR: Which one?

MR. LANE: Then Denton mortgage, now, to Hogencamp.

A. That is, the Lakewood mortgage?

THE VICE CHANCELLOR: Yes, that is this. Lakewood mortgage here under foreclosure.

A. It was left in the bank.

Q. For what purpose? A. It was in the bank as collateral security for a note of $12,000.

MR. CAREY: We ought to have the note designated:—what note?

THE VICE CHANCELLOR: Well, that is the the note they have talked so much about that was lost, and that Mr. Lane testified about, and we had to get its contents out of the case of Richards vs. Shaw. We never have been able to refer to it in any other way, because he could not put it in evidence on account of its being lost.

BY THE CHANCELLOR:

Q. You mean the note, do you not, that you say Shaw gave, and which was dated June 30, 1902, and which, with the $13,000 note which you say

Shaw gave, and which latter note is in evidence, Exhibit C, 19, were in the Call Loan Account under date of August 27th, 1902—that is the note you mean, is it not? A. Yes, sir.

By Mr. Lane:

Q. When you testified, Mr. Hogencamp, on your cross examination, that you had no interest in certain New York properties, what did you mean by that? A. No personal interest.

Q. Well, did you mean that you did not have, at times, mortgages upon those properties? A. No, I had mortgages.

Q. Well, what did you mean by the term "interest" when you were testifying? A. Well, I held them merely as collateral securities for the Bank.

Q. What did you mean by the term "Interest," or what did you understand was meant by the term "interest" when you said you had "no interest"? A. I drew a distinction between my person account and the official account; that is my recollection of it now. I do not know what I did testify. I had it both ways. I had a personal interest in that $7,500.

Q. That mortgage? A. That mortgage. I had a personal interest in that.

Q. The stock that was used by Mr. Denton in the McKelvey matter, what stock was that? A. Well, in was my personal stock.

Q. And what did you do with it?

The Vice Chancellor: Do you mean eventually?

Q. No, I mean what did you do with it with respect to this transaction with McKelvey? A. The fifty shares?

Q. Yes, sir. A. Well, I have no recollection of going over to New York with it myself, although I cannot say that I did or did not; either. I went or Mr. Denton went, and borrowed the money on it.

THE VICE CHANCELLOR: At the Chase National Bank?

A. I think so; yes, sir.

BY MR. LANE:

Q. Will you tell us how much Mr. Denton owed the bank on July 23d, 1900, when the Shaw note was discounted, by reference to the General Ledger? A. (Referring to the General Ledger.) Here is one item of $16,000.

BY THE CHANCELLOR:

Q. What is the date of it? A. July 23, 1900.

Q. That is not what he asked you, he asked you before that. A. I understood him at that time; was it before that he asked me?

Q. Certainly; he wants to know this: He says the Shaw notes were discounted on the 23d of July, 1900,—now, what did Denton owe before that?

MR. LANE: I want to correct that, your Honor; the Shaw note was discounted on the 24th day of August, 1900.

THE VICE CHANCELLOR: It was not discounted at all.

MR. LANE: Well, credited.

A. There was a loan made to him, Denton, on the 23d of July, of $16,000, as appears on General Ledger No. 7, page 17, under the title of Call Loans.

Q. Is that all? A. I think that is all I know of.

By Mr. Lane:

Q. Now, will you turn to Denton's individual account for about that date? A. (The witness turns to Individual Ledger No. 16, A to L, page 338, account of Henry M. Denton). There is a credit of July 23, 1900, $16,000.

Q. Now, how long before that had he gotten any money from the bank, according to the Individual Ledger? A. June 8th, 1900.

Q. How much? A. That was a note of $2,400, less the interest.

Q. Was that the discount of a note of $2,400 then? A. Yes.

Q. Well, when before that? A. April 23, 1900.

Q. And how much was that? A. That was $16,000, less the interest.

Q. And before that? A. There was a loan on March 20, 1900.

Q. Of how much? A. $13,000.

Q. Go on. A. On March 7th there was a discount of $13,000, less interest; and on March 7th there was a discount of $12,000, less interest $60. March 5th there was a discount of $2,400 less the interest.

Q. That is a carry-over, is it not? A. Yes, sir; I think these were all carried over here (indicating the balance of the items in the account).

Q. The rest of them were carried over? A. I think so; yes, sir.

Q. Now, subsequent to July 23d, 1900, what is the first loan that appears on that book? A. August 23d.

Q. How much did he get then? A. $7,500, less the interest.

Q. Turn to your individual account, Mr. Hogencamp, for March 21, 1901? A. I have done so.

Q. I show you check dated March 21, 1901, signed by Henry M. Denton, and ask you whether that check has any connection with that bond and mortgage, the $24,000 bond and mortgage? A. Yes, sir.

Q. What is it? A. When the $24,000 was taken up it was taken up by the bond and mortgage on the Beard Building, of $14,000, and Denton's check for $10,000 in cash.

Q. And is that the check? A. Yes, sir.

Q. Was the interest paid on that date also? Refer to your Credits? A. Yes, sir (turning to Credits, No. 44, 1900).

Q. How much? A. Interest and discount is credited, "Interest on mortgage, $344."

Q. (Showing witness a check). And is that the check for it? A. Yes, sir.

MR. LANE: I offer both checks in evidence. The first check is dated March 21, 1901, to Henry M. Denton for $10,000.

(The checks are admitted without objection, and they are marked Exhibit C, 42 and C, 43. C, 42 is a check of Henry M. Denton, to the order of W. Hogencamp, dated March 21, 1901, drawn on the Second National Bank of Jersey City, for $10,000; endorsed by W. Hogencamp; and punctured with three holes, showing payment. C, 43, is a check of Henry M. Denton to W. Hogencamp, dated March 21, 1901, on the Second National Bank of Jersey City, for $344; endorsed W. Hogencamp; and bearing the three punctures showing payment).

Q. Did you have any conversation with Hr. Den-

ton with respect to the state of his different accounts that he had with you? A. Yes.

Q. How often? A. Very frequently.

Q. And what were the conversations about, what was said? A. As to the state of his ac counts.

Q. Yes, what did you tell him?

THE VICE CHANCELLOR: Must he not have told him different things from time to time?

MR. LANE: Generally, I want to know.

A. Generally as to how the account stood; what had been paid; what was liable to be paid; and general conversations in regard to his financial transactions.

Q. And how long did that continue?

THE VICE CHANCELLOR: The conversations?

Q. No, during what space of time did you have these conversations with him? A. Oh, for several years.

Q. Well, during what space of time with respect to the running of the accounts? A. During all the time the accounts were running.

Q. Did you tell him what payments were being made? A. Yes, sir.

Q. What balance is there at the present time in the Trustee Account? A. The Trustee Account seems to have been closed.

Q. What is there in the Attorney Account? A. Well, that is closed, I think. There is a balance in the account.

Q. I did not ask you that. What is there in the Attorney Account?

THE VICE CHANCELLOR: Have you the pass book of the Attorney Account here?

THE WITNESS: No, sir; I will have to look at the Ledger. (Examining the account in the Ledger).

Q. Now, what balance is there in the Attorney Account? A. Nothing.

THE VICE CHANCELLOR: The account is closed.

Q. Are there any other accounts which you held for Denton that there is any balance in? A. No, sir.

Q. What about the Rent Account? A. Oh, I beg your pardon; there is the Rent Account in which there is a balance of $30.84.

Q. Is that all the moneys that, at the present time, are under your control, belonging to Denton? A. Yes, sir; they are not under my control, they are up in the Second National Bank.

BY THE VICE CHANCELLOR:

Q. But you control then in the account, which you can check out? That is what Mr. Lane meant. To that extent you can control them? A. Yes, I can check it out.

MR. LANE: I want to say this, your Honor, apropos of the discussion as to the note for $35,000—that original note of $35,000 has not been found; I am going to try to have that particular note found. That particular note has not been found, and that is the reason why I haven't made any statement with respect to it before. We are trying to find that note.

THE VICE CHANCELLOR: Do you mean with respect to that, that you want now to

examine him, in view of the statement that you cannot find it?

MR. LANE: No. I do not, but we cannot finish today, and I may, if I find that note, want to say something about it, or cross examine him with respect to it.

THE VICE CHANCELLOR: All right; I will permit you to do so.

RE-CROSS EXAMINATION by MR. CAREY.

Q. Will you turn to the books of the bank, and state what time the William Hogencamp Trustee Account for Henry M. Denton began, and what time it ends?

MR. LANE: I object to that, on the ground that it has been asked and answered several times.

Objection overruled.

THE VICE CHANCELLOR: Just take the pass book and tell us.

A. (Referring to pass book). November 14, 1901.

BY THE CHANCELLOR:

Q. Which is that, the beginning or ending? A. That is the beginning of it.

Q. That it the first deposit? A. Yes.

Q. And when did it end,—that is to say, when are the last items of amounts taken out? A. January 4th, I think it is, or 21st, I don't know which, 1904. I imagine it is the 4th, from something else.

Q. And when was the last money put in? A. January 5th, 1904.

Q. Then it must be the 21st? A. Not necessarily; no, sir.

BY MR. CAREY:

Q. Please tell us when the account entitled "W. Hogencamp Rent Account" began, and when it closed? A. It began November 20, 1903.

BY THE CHANCELLOR:

Q. And when was the last money taken out of that? A. January 5, 1906.

Q. And when was the last money put into it? A. November 16, 1905.

Q. And that is the one that has the balance of $30.84? A. Yes, sir.

BY MR. CAREY:

Q. Please give us the similar facts with respect to the account entitled "W. Hogencamp, Attorney. A. I think I will have to change that answer, your Honor, when I come to look at this here (referring to the witness's memorandum). I think that the Attorney Account and the Rent Account were subsequently merged into one, so I will have to look at the ledgers.

Q. Which account do you want to look at,—the Rent Account? A. The Rent Account and the Attorney Account. (Examining Ledger). The Attorney Account commenced January 20, 1903.

Q. And when is the last item of money taken out of it? A. January 4, 1904.

Q. Now, then, go back and see if you are correct about that Rent Account. That would be in the same book, wouldn't it? A. Yes, sir. The Hogencamp Rent Account commenced November 20th, 1903, and the last charge was January 5, 1906.

Q. The last item taken out, that was? A. Yes, sir; and the last credit on the Rent Account was $2,837.05, on the 16th of November, 1905.

Q. Now tell us about the Trustee Account; look at that account and tell us when it began, and when it ended. A. By reference to the Individual Ledger, No. 17, to the Trustee Account, I find that the date of the beginning of that account was November 14, 1901, and the last item taken out was dated August 6, 1902.

BY THE VICE CHANCELLOR:

Q. Now, at that time, Mr. Hogencamp, does that Individual Ledger show that both sides of that account were the same, so that it was balanced; or was there a sum there due to the bank, or by the bank to the account? A. There seems to be a balance here of $38.70, which I think went into the Attorney Account, but I will look and see. (After examining the Attorney Account), Yes, the balance of $38.70 was transferred to W. Hogencamp, Attorney Account.

BY MR. CAREY:

Q. Mr. Hogencamp, you, of course, could draw against any one of these accounts? A. Yes, sir.

Q. And nobody else could draw against these accounts, without your consent? A. No, sir.

THE VICE CHANCELLOR: You are asking a question of law, are you not, now?

Q. And whenever any checks were paid against any of these accounts drawn by any person other than yourself, you had to give authority to have them paid out of one or the other of these accounts before the bank would make such payment? A. If I was temporarily absent I think Mr. Hasking would have assumed the transaction, if he knew the transaction; but ordinarily they were submitted to me.

Q. And whatever you directed to be paid out

of these accounts was paid out of them? A. Yes, sir.

Q. Now, have you any idea how much money passed through this Trustee Account?

THE VICE CHANCELLOR: Do you mean without looking at it?

A. No, not without looking.

Q. Can you tell by examining the account, how much money passed through it?

MR. LANE: I object to that as not proper cross-examination.

THE VICE CHANCELLOR: He can answer yes or no.

A. Yes.

Q. Will you please state how much money passed through the Trustee Account?

MR. LANE: I object to that, on the ground that it is not proper cross examination.

THE VICE CHANCELLOR: How is it cross examination?

MR. CAREY: These accounts have all been opened on his re-direct examination.

THE VICE CHANCELLOR: Well, as long as the accounts are all here, and no reviewing court can ever spend the time to look at these books, and I cannot tell how much of these things that are coming out of these books may be very material, I am not going to observe the strict rule with respect to the time when testimony was introduced; and for the purpose of aiding the reviewing court, I am going to put as much as I can in this record, so we won't have to

have cumbersome books of account taken up. I overrule the objection.

A. $68,566.38.

Q. And there were a great many withdrawals from that account, as appears by the book? A. Yes, sir.

Q. That was quite an active account during the time of its existence, was it not? A. Yes, sir.

Q. Now, are you able to tell from an examination of the book before you, what any one of these withdrawals went to pay?

THE VICE CHANCELLOR: Do you mean from what appears on that book?

MR. CAREY: Yes, sir.

A. No, it is too numerous.

THE VICE CHANCELLOR: Oh, no; that is not a proper answer; the proper answer is that there is nothing there to designate anything; there is nothing there to show anything; there is nothing but the figures. No one could tell from a mere inspection of the book what any item was, because there is nothing on the book excepting figures. There is nothing to show what it was paid for, or how it was paid, or how it got into the book; it is just a mere matter of a date and an amount of money.

MR. CAREY: I asked the question in order to have that appear on the record.

THE VICE CHANCELLOR: Oh, surely. All these Individual Ledgers consist simply in the name of the account at the top of the page, and then on one side a series of dates and amounts, and then two heavy red lines to indicate a division; and then on the

other side, other figures and dates; so that no one, from a mere inspection of the book, could tell what any item on the take-out side meant to pay, or anything about it.

Q. Have you any records whatever which would tell what those withdrawals in this Trustee Account went to pay?

THE VICE CHANCELLOR: Do you mean by "you" him or the Bank?

MR. CAREY: Either one, either him or the Bank.

THE VICE CHANCELLOR: You had better separate them.

Q. Well, you, individually? A. Yes, sir.

Q. Where are those records? A. The checks.

Q. And do the checks state what they went to pay? A. In some cases they do, and in some they do not.

Q. Now, what proportion of the checks drawn against the Trustee Account would show what the checks went to pay?

MR. LANE: I object to that, unless the checks are produced.

THE VICE CHANCELLOR: I overrule that objection. He has a right to test his memory as to whether it was his custom to write on the checks that he drew against the Trustee Account the thing that the check was in payment of. (To the witness): Have you any memory about that, Mr. Hogencamp?

A. No, sir.

Q. Where are those checks? A. I think they are here; possibly some of them may be down below.

By The Vice Chancellor:

Q. By "down below" you mean at your home? A. At Deal Beach.

By Mr. Carey:

Q. Do you know whether they are here or not? A. Some of them are.

The Vice Chancellor: He says some of them are here and some of them may be at Deal.

Q. Those checks came out of books which had stubs for making entries on, did they not? A. Some of them.

Q. Didn't they all come out of such books? A. No, sir.

By The Vice Chancellor:

Q. You know what checks he is talking about, do you? A. Yes, sir.

By Mr. Carey:

Q. So far as those came from books having stubs, would not the stubs throw light upon what the checks went to pay? A. Not necessarily; no, sir.

Q. Well, not necessarily, of course not; but would they, or wouldn't they, according to your recollection? A. I do not recollect.

Q. You drew most of the checks yourself, did you not? A. No, sir.

Q. Who drew those checks? A. A large number of them were drawn by Mr. Denton.

Q. And you have the stub checks of the checks drawn by Mr. Denton on this account? A. I don't know whether I have or not.

Q. If you have, where are they? A. If I have

them they must be down at Deal, or up at Paterson. Since then, if I may volunteer an explanation, I have removed twice, with the ordinary results.

Q. Please tell us the total amount of deposits and the total amount of withdrawals in the Wm. Hogencamp, Attorney Account? A. $26,797.72 is the total amount of deposits; and the total amount of withdrawals, $26,836.42. The difference is because there was $38.70 transferred from the Trustee Account to this account, which, added to the deposits, makes the two equal.

Q. No one could draw against this account without your permission?

THE VICE CHANCELLOR: He has been all over that. He said that as to each of the accounts. Now, why take them up specifically? You asked him before, with respect to all of them, whether he alone could draw against them, or whether, if anybody else drew against them they could get the money only if he authorized it; and he said yes.

Q. Who drew the greater part of the checks against this Attorney Account? A. I do not recollect now.

Q. Did Mr. Denton draw against the Attorney Account at all? A. I do not recollect now; I think he did.

Q. Did anybody except yourself and Denton draw against the Attorney Account? A. No, sir; I think not.

Q. Did anybody except yourself and Denton draw against the Trustee Account? A. No, not that I know of.

Q. Well, do you recollect authorizing the payment of anybody else's checks out of either of these

accounts, either the Attorney, Trustee or Rent Account, except yourself and Denton? A. Anybody else's checks?

Q. Yes. A. No, sir.

By The Vice Chancellor:

Q. Well, it is perfectly sure, is it not, that you never permitted any money to go out of any of these accounts unless it was by your check, or a check drawn by Denton that you authorized to be taken out of one of these three accounts? A. Yes, sir.

Recess until Friday, September 23rd, 1910, at 10 o'clock, A. M.

Jersey City, Friday, September 23, 1910.

Hearing of the cause resumed at 10 o'clock A. M.

William Hogencamp, recalled.

The Witness: (To the Vice Chancellor) I desire to supplement answers that I made to Mr. Carey's questions last evening: I was asked concerning the total amount of deposits in these various accounts, and, by reference to the books, I gave the totals. I wish to supplement that by saying that that did not represent all of the money deposited from outside sources in those accounts, but, in some instances represented loans by the Bank, which were credited to the account.

By Mr. Carey:

Q. Mr. Hogencamp, won't you refer to the In-

dividual Ledger containing the Wm. Hogencamp, Rent Account, and tell me what it shows the total amount of deposits to have been, and the total amount of withdrawals? A. By reference to Individual Ledger No. 19, page 790, title of account "Wm. Hogencamp, Rent Account," I find that the total deposits were $126,418.26; the total withdrawals is $126,387.42; showing a balance, as heretofore testified to, of $30.84 to this account.

Q. You made large payments by your checks out of all these accounts, did you not? A. Yes, sir.

Q. And you also made large payments to the Second National Bank out of all these accounts? A. Yes, sir; as I recollect it.

Q. Now, have you any means by which you can now state and testify to the Court for what purpose those withdrawals from these three accounts were made; that is, what items they paid?

THE VICE CHANCELLOR: (To the witness). He does not want you now to go into details as to each one. You are merely to state generally. Do you understand the question?

THE WITNESS: Yes, sir. For what purpose?

THE VICE CHANCELLOR: He means, suppose he selected any one withdrawal made on your own check, for instance, from any one of these accounts, have you any means of being able now to testify what that particular item of withdrawal was taken out for—for instance, was it for your benefit, for Denton's benefit, to pay a debt of Denton's, or a note at the Bank, or what not?

A. Yes, sir; I think I can do that.

Q. Can you do it as to all the items of withdrawal in each of these accounts? A. Yes, sir.

Q. Take, for example, the withdrawal under date of November 16, (pointing to Individual Ledger, No. 19, A to L, page 790, account entitled "Wm. Hogencamp, Rent Account," and to an item which on the book reads as follows: "1905, Nov. 16, 2513.30"); what did that withdrawal go to pay? A. May I refresh my memory?

THE VICE CHANCELLOR: Oh, surely. That is what he wants you to do. He has asked you whether you had any means that enabled you to do it, and he asks you now, having indicated a particular item, to consult whatever you have, and let him know.

A. It was in repayment of a loan made to Henry M. Denton of $2,513.30.

BY THE VICE CHANCELLOR:

Q. Made by whom? A. Made by the Second National Bank.

Q. He had already borrowed on a note from the Bank, the sum of money that you have mentioned, and this withdrawal was to pay back to the Bank that loan; is that correct? A. Yes, sir.

BY MR. CAREY:

Q. When was that loan made? A. June 5th, 1905. That is the date of the note.

Q. And you have the note there, have you? A. Yes, sir.

Q. And that note is drawn "to the order of myself"? A. Yes, sir.

Q. And signed by Mr. Denton? A. Yes, sir.

Q. And endorsed by Mr. Denton? A. Yes, sir.

Q. And was that note discounted? A. It was charged into Call Loan Account.

BY THE VICE CHANCELLOR:

Q. It is on demand, and, therefore, would not

be discounted, would it? A. It would not be discounted; no, sir.

By Mr. Carey:

Q. And can you refer to the Call Loan Account in which that note is entered? A. Yes, sir (witness refers to General Ledger No. 8, title of account Call Loans, on page 50, and indicates an item under date of June 16, 1905, reading as follows: "H. M. Denton, 2513.30").

By The Vice Chancellor:

Q. Now, point to the other side, and show its payment, won't you, please? A. (The witness indicates an item on the second column, on the next page, 51, reading as follows: "1905, Nov. 16. H. M. Denton, 2513.30").

Q. When that money was loaned on that note, Mr. Hogencamp, did it go into this Rent Account? A. No, sir.

By Mr. Carey:

Q. Where did it go? A. That money was taken to pay taxes over in New York.

Q. How do you know that? A. By my memorandum on the check at the time it was drawn, November 16, 1905. I have been looking for the receipts, but they are all jumbled up, and I have not been able to find the receipts; and if necessary, I can go to the Tax Office in New York and get a certificate showing the payment at that time of these taxes.

Q. Do you recall now what property the taxes were paid upon? A. 1905? No, sir; I cannot say definitely now.

By The Vice Chancellor:

Q. Well, whose property was it? A. Henry M. Denton's.

By Mr. Carey:

Q. If you cannot recall the property, how do you recall that it was Denton's property? A. From the transaction. It was Denton't note given for that identical amount to pay those taxes.

Q. Did this check which you produced here, dated November 16th, 1905, go to pay taxes? A. Yes, sir.

Q. Delivered to whom? A. Well, my recollection of it is that the taxes wee paid over in New York by another check, and that account was not good for it at that time, and I got a loan here of $2,513, and took the proceeds of that loan and paid the taxes over in New York. I cannot find out now what particular channel that went through, but, as I say, I can go over there, I think, and find the receipt for it.

Q. Then this check which you produced is not the check which paid the taxes at all? A. No, sir; that check takes up the loan, "Account of taxes," as it states on the check.

The Vice Chancellor: That check that he has there, Mr. Carey, it has not been suggested that he paid any taxes with. He says that is the check that went into the Bank to take up the note; and he shows that at the date of that check Mr. Denton's Call Loan is credited with the amount of that check, which is the amount of the call loan.

Mr. Carey: I offer them in evidence.

The Vice Chancellor: For the purpose of clarity, these papers, being offered, will be admitted in evidence and will be marked, the note Exhibit C-44, and the check, Exhibit C-45.

MR. LANE: Of course, I have no objection to them.

THE VICE CHANCELLOR: Exhibit C-44, is a promissory note dated Jersey City, June 5th, 1905, "On demand, to the order of myself," for $2,513.30, to the Second National Bank of Jersey City, with interest. It is signed "Henry M. Denton," with a red ink word "Paid" across the signature. On the back appears the signature of Henry M. Denton.

BY THE VICE CHANCELLOR:

Q. Those two signatures are each in the handwriting of Henry M. Denton, are they Mr. Hogencamp? A. Yes, sir.

THE VICE CHANCELLOR: Exhibit C-45, is a check on the Second National Bank of Jersey City, dated November 16, 1905, "Pay to the order of Loan %, Taxes, $2,513.30," signed "Wm. Hogencamp," with the words in ink "Rent %."

Q. Who wrote that on there? A. I did.

THE VICE CHANCELLOR: There is no endorsement on the check Exhibit C-45, and the check is punctured with three holes, showing its payment.

BY MR. CAREY:

Q. Mr. Hogencamp, referring to Individual Ledger No. 18, A to L, page 798, to the account entitled "Wm. Hogencamp, Rent Account," I see under date of April 28, 1904, on the withdrawal side an item of $1,944.91, and also on the same date, an item of $780. Can you tell me what those items paid? A. By reference to my memorandum book—of course, I have not access to the

Dealers' Check List, which cannot be found. The items are charged up in bulk, as I said yesterday.

THE VICE CHANCELLOR: All right, go ahead. He asks you to look at any memorandum you have, and tell him, if you can, what you withdrew those items to pay.

THE WITNESS: (Referring to his memorandum): There is one item of $1,260.91, and another item of $577.05, and an item of $106.95, making a total, as it says there, of $1,944.91, and another item of $780 for the other charge.

THE VICE CHANCELLOR: Now he wants to know what those were taken out for, the purpose of those withdrawals.

THE WITNESS: Payment of moneys on Denton's account.

THE VICE CHANCELLOR: I know, but he wants to know what for.

THE WITNESS: Oh, well, I will have to refer to the checks, if I have got them here. (Examining checks) I find a check dated April 27, 1904, signed by Henry M. Denton, to the order of the Collector of Assessments and Arrears, for $1,260.91, which, by endorsements, went to that official, and has the puncture marks of the Bank, showing that it was paid. This is signed by Mr. Denton.

THE VICE CHANCELLOR: For purposes of identification this check has been marked A-10.

MR. LANE: Well, I will offer it.

(The check is admitted without objection and retains its original marking A-10).

THE WITNESS: The next item that went

to make up the $1,944.91, was a check, dated April 27th, 1904, to the order of the Receiver of Taxes, for $577.05, signed by Henry M. Denton, and by endorsement it shows that it went to the official to whom it was ordered paid, and that the Bank paid it. The balance of that item, $106.95, is represented by a check dated April 27, 1904, to the order of the Department of Water Supply, for $106.95, signed by Henry M. Denton, and by endorsements showing that it went to the official to whom it was drawn, and the puncture marks show that it was paid by the Bank.

THE VICE CHANCELLOR: Now, he wants to know how that $780 got out, what that was for?

THE WITNESS: I will have to look that up among some other checks that are not here.

(The check to the Department of Water Supply for $106.95, previously marked A-8, for identification, and the check to the Receiver of Taxes for $577.05 heretofore marked for identification A-9, are now offered in evidence by Mr. Lane, admitted without objection, and retain their original marking).

Q. Do you know what properties these municipal liens or charges were paid upon? A. I do not recollect.

Q. You could not tell that? A. No, sir; not now.

Q. Is there any way by which you could tell that? A. No, sir; except by going over to the Tax Office in New York.

Q. Now, take the Individual Ledger No. 18, A

to L, Wm. Hogencamp, Rent Account, and turn to the item of May 21, 1904, $224.50, on the withdrawal side. A. Yes, sir; I have the check. That is a check heretofore marked A-11. It is a check signed by Henry M. Denton, dated May 20, 1904, to the order of George De Forest Barton, for $224.50. It has in pencil on the face of it, the words "Rent Account," which I placed there to show to which account it should be charged; and it has on the back of it an endorsement as follows: "For deposit in Merchants' National Bank. George De F. Barton." It has the Paid stamp of the Merchants' National Bank, and the three holes showing that it was paid by the Second National Bank.

(The check was offered in evidence by Mr. Lane, admitted without objection, and retains its original marking).

Q. What did that pay, Mr. Hogencamp? A. It is only a matter of recollection.

Q. Well, what is your recollection? A. I think Mr. Barton was an attorney over in New York.

Q. Well, what did it pay? A. Some obligation of Mr. Denton's.

Q. What obligation? A. I could not tell you.

Q. You only say "an obligation of Mr. Denton's" because you assume that everything that went out of this account was for Mr. Denton's benefit; is not that so? A. Yes, sir; it is signed by Mr. Denton.

THE VICE CHANCELLOR: It is Mr. Denton's check.

Q. Now, in the same ledger and the same account is the item "May 9, 1904, $11,266," on the withdrawal side? A. That item is not here.

BY THE VICE CHANCELLOR:

Q. By "that item is not here," what do you mean? A. I mean that the check authorizing that payment is not in this bunch.

Q. And you would have to hunt through your checks to find that, would you? A. Yes, sir.

BY MR. CAREY:

Q. In the same ledger, same account, the item dated October 10, 1904, for $150, on the withdrawal side? A. That check does not seem to be here.

BY THE VICE CHANCELLOR:

Q. These checks that you are now looking at are, as I recall it, checks all of which are signed by Mr. Denton, aren't they, except two or three which you signed? A. These checks are all signed by Mr. Denton (referring to the checks now before the witness).

MR. LANE: Just a minute. I have some checks here.

BY MR. CAREY:

Q. Mr. Hogencamp, some checks were produced here the other day, which the Court marked for identification A-1 to A-17, as I recall it, inclusive, and which were checks signed by Mr. Denton, you said, and by your orders charged against this account "Wm. Hogencamp, Rent Account": Now, excepting what those checks inform you, are you able, from any other checks or memoranda that you have here, to tell me what the other withdrawals from that account went to pay? A. No, sir.

Q .And I understand your testimony to be that, to answer those questions which I might ask you concerning other items, would require you to go

and get whatever other checks you have against this account, and with those before you, give whatever testimony you could about the use to which this money was put? A. Yes, sir.

Q. And unless something appeared to indicate what the check went to pay, you would be unable to state what it did pay actually? A. Not necessarily.

By The Vice Chancellor:

Q. In other words, I understand that some of these checks might (although they contain nothing on their face except perhaps that they are drawn to your own order) refresh your memory as to what the money went for? A. Yes, sir.

Q. But you could not tell unless you had the check before you? A. No, sir.

By Mr. Carey:

Q. Will you turn to the Trustee Account in the Individual Ledger A to L, No. 17, page 688, account entitled "Wm. Hogencamp, Trustee." On the withdrawal side, under date of December 12, 1901, is an item of $251.58: Will you tell me what that withdrawal went to pay? A. Some obligation of Mr. Denton.

Q. I want the details; what was it for, do you remember? A. No, sir.

By The Vice Chancellor:

Q. Now, where have you any memoranda or record or other things that would enable you to testify what that item went to pay? A. By referring to the checks.

Q. And where are those checks, as far as you know? A. I think they are down at Deal.

Q. They are not here in court? A. No, sir; they are not here. There (referring to the witness'

memorandum book) seems to have been a payment on December 10, "Ronalds & J. Co., $251.58."

Q. Payment on account of what? A. Payment on account of some obligation of Mr. Denton.

Q. A payment with respect to what? A. I don't know, sir.

Q. If you had the check, so far as the memorandum that you are consulting is concerned, would it convey any more information than that memorandum, namely that it was drawn to Ronalds & J. Co.? A. I think it would.

Q. You think the check would? A. Yes, sir.

By Mr. Carey:

Q. You have been consulting a memorandum, Mr. Hogencamp; in which handwriting is that memorandum? A. Mine.

Q. And when was it made? A. About the time of the entries, or thereabouts; I do not recollect.

Q. Was not this made the same as the other account which appears in this book "Hogencamp in account with Henry M. Denton,"—at the end of the account? A. I do not recollect now, sir.

Q. This side of the book that I am pointing at, beginning "November 14, 1901," represents what? A. Receipts of Denton's moneys by me.

Q. And the other side represents withdrawals against the receipts, is that right? A. Yes, sir.

Q. Then the receipts are on the left-hand page and the disbursements are on the right-hand page of the book; it that right? A. Yes, sir.

Q. And that is so throughout this memorandum of the account? A. Yes, sir.

Q. Now, on the receipt side the memorandum begins November 14, 1901, and ends at what time? A. June 5th.

BY THE VICE CHANCELLOR:

Q. The same year? A. No, it must be the next year, 1902.

Q. 1902? A. Yes, sir.

BY MR. CAREY:

Q. And on the disbursement side, the memorandum begins November 14 of what year? A. 1901.

Q. November 14, 1901, and ends when? A. March 31, 1902.

Q. Now, what did you make this memorandum up from, Mr. Hogencamp? A. From the books of the Bank and the checks.

Q. Does the memorandum show all that the checks show? A. I do not recollect now, sir.

BY THE VICE CHANCELLOR:

Q. I notice on the top of the book you have got "149th St.," did that mean that all these payments were with respect to that property? A. I think so; yes, sir; as far as I recollect.

(The book from which the witness is testifying is marked by the Court, for purposes of identification, L.M.G.-1. The book is not paged by number and is an ordinary blank pass book of the Second National Bank of Jersey City).

BY MR. CAREY:

Q. Now, this is not a complete transcript of the Trustee Account? A. No, sir.

Q. Did you not make that up about the month of March, 1902? A. I do not recollect, sir, when it was made up.

Q. It may have been after that? A. It may have been.

Q. Now, Mr. Hogencamp, have you the checks

here which were drawn against the Wm. Hogencamp, Trustee Account, represented by the transactions, as they appear in the books of the Bank? A. No, sir.

Q. You have not those checks here? A. No, sir; they are not here.

Q. So that for a considerable portion of this Trustee Account, so far as you have any records here, you would have to rely upon the books of the Bank, which simply show dates and figures? A. Yes, sir.

Q. And the books of the Bank would not give you any information as to what these withdrawals went to pay? A. No, they would not.

Q. Will you please turn to the Wm. Hogencamp, Attorney Account? A. For the same time?

Q. I want the entire account. A. (Witness refers to Individual Ledger, A to L, No. 18, page 797).

Q. Have you the checks here which were drawn against that account? A. No, sir.

Q. And you have no record here which would enable you to identify what these various withdrawals were to pay? A. No, sir.

Q. And if you were able to make such identification that would necessarily be from the checks themselves? A. Yes, sir; except that there might be some item that I might personally recollect, some particular item.

Q. Suppose you look over that Attorney's account and see if you recollect any particular items concerning which you are able to testify? A. I do not see anything there except the figures.

Q. And for that reason, you are unable to testify what any of those withdrawals in that account went to pay? A. Yes, sir.

Q. Turning to the account which you testified from, where deposits and withdrawals were made in your personal account covering the period from August 16, 1901, to November 25, 1901, on the deposit side, and from August 16th to November 13th, 1901, on the withdrawal side, the books of the Bank will not give you any information as to what these withdrawals were to pay, will they? A. No, sir.

Q. And whatever information you would be able to give with respect to those payments would necessarily be derived from the account which you made up, and from which you have testified heretofore? A. Yes, sir.

Q. The last mentioned account is contained in the same Bank pass book, L.M.G.-1, for identification, as a portion of the Trustee Account is contained in? A. Yes, sir.

Q. And the whole thing is your private memorandum? A. Yes, sir.

Q. Have you in that book any other accounts concerning Mr. Denton? A. No, sir.

Q. That book you never showed to Mr. Denton, did you? A. No, sir; not that I recollect. I may, and I may not; I am not certain.

Q. Now, turning to the item in the book which has been marked L.M.G.-1, for identification, in the account that you have there with Mr. Denton, and which you have previously testified about, and referring to the item under date of August 26, 1901, "W. H. Redfield, Stroh & H., $1,000,"—what did that item pay? A. An obligation of Mr. Denton.

Q. What was the obligation? A. Money owing to Stroh & H.

Q. Who were Stroh & H.? A. They were connected in some way, I don't know whether as car-

penter, mason or what, in a building operation for Mr. Denton.

Q. And upon what property? A. I do not recollect it.

Q. Are you sure they were contractors or workmen upon any of his properties? A. Yes, sir.

Q. Have you the check here covering that item? A. I think not, sir.

MR. O'CALLAGHAN: You have it here; you folks have got it.

THE WITNESS: I do not recollect it. Mr. Lane will.

MR. LANE: (Producing check): It is in evidence.

THE VICE CHANCELLOR: Yes, it is Exhibit 11-B and reads as follows: "August 26,1901, pay to the order of Wm. H. Redfield, One Thousand Dollars," signed Wm. Hogencamp," and endorsed on the back "Pay Stroh & Huber, or order, Wm. H. Redfield," and under that "Stroh & Huber," and it has the puncture marks that show it was paid.

BY THE VICE CHANCELLOR:

Q. In whose handwriting is that endorsement "Pay Stroh & Huber"? A. Mine.

Q. And under that the signature of Redfield is in Mr. Redfield's handwriting? A. Yes, sir.

BY MR. CAREY:

Q. Can you tell now on what property this paid some obligation? A. I do not recollect.

Q. As to the item under date of August 22, "F. N. Rose, Judgment, $3,448.29."—that was a judgment against whom? A. On one of Denton's properties; against Denton, I think—Denton or

Redfield, I don't know which. It was for Denton's benefit.

Q. Did you get the amount of that payment back again?

MR. LANE: I object to that as improper cross examination, for that was all gone over with Mr. Vredenburgh before, and traced into the account and shown where it was.

THE VICE CHANCELLOR: Yes, I think you will find that Mr. Vredenburgh went all over that whole business.

MR. CAREY: I will not take up any more time on that, if Your Honor please. As far as we are concerned, I think we will be able to clear it up on our side of the case.

The following paper having been called for by the defendants and delivered by the solicitor of the complainants, is now offered in evidence by Mr. Carey, without objection. Assignment of Mortgage from Florence N. Rose, of the City of New York, Borough of Manhattan; consideration $3,448, to her paid by William Hogencamp of Deal and assigns a mortgage bearing date the 24th day of November, One thousand eight hundred and ninety-seven, made by Jeremiah Flanagan and Annie H. Flanagan, his wife, to Florence N. Rose, to secure the sum of Three Thousand Dollars; which mortgage was recorded in the Register's Office of the City and County of New York, on the 24th of November, 1907, Block Series of Mortgages, Section 7, liber 81, page 436, and indexed under Block No. 1909, on the Land Map of the City of New York;

which assignment is signed by Florence N. Rose, in the presence of a witness, and is acknowledged before Jesse W. Ehrich, Notary Public of New York, by Florence N. Rose, on the 22nd of August in the year 1901. This assignment was then recorded in the Register's office aforesaid on the 22nd day of January, 1902, in Block Series of Mortgages, Section 7, liber 130, page 296, and indexed under Block No. 1909 on the Land Map. This paper is now marked Exhibit C-44.

It is stipulated by and between the counsel for the respective parties that the mortgage in question was begun to be foreclosed in New York, and had reached some stage of the proceedings, probably an interlocutory judgment; and that this is the same item as has been always referred to as the Rose Judgment, although it appears, in face, to have been an assignment of a mortgage in a suit in which an interlocutory judgment was entered. It is further stipulated that this was a mortgage upon a property between 124th and 125th Streets on Lenox Avenue in the City of New York, in which Mr. Denton was interested.

Q. Do you recall now, Mr. Hogencamp, receiving payment for this so-called Rose judgment? A. Yes, sir.

Q. And that payment took place at the time the title was passed to the property upon which the mortgage was a lien out of which the judgment arose? A. I think so.

Q. And on that day did you receive other moneys, the proceeds of the sale of that property?

MR. LANE: I object to that on the ground that it has already been gone into.

THE VICE CHANCELLOR: As it is easier to let him answer the question, than to take the time to look over all these pages of testimony, I am going to overrule the objection.

A. I received other moneys.

Q. Moneys received from that property at that time? A. I think so.

Q. Do you know what amount you received? A. I received $3539.54 and $7584.79.

BY THE VICE CHANCELLOR:

Q. What is the date? A. January 30, 1902.

Q. Where did you put all those moneys that you received? A. They went into the Henry M. Denton Trustee Account.

BY MR. CAREY:

Q. You divide those two items; why do you do that? A. I don't know; I do not recollect now.

BY THE VICE CHANCELLOR:

Q. Well, is not that the way you got the checks? A. I think it was.

Q. Didn't you get the checks that way from the person that sold the property, who paid you the money? A. Yes, sir; I think I did.

Q. And in the Trustee account, under that date, there appear these two separate items, do there not? A. Yes, sir.

Q. And if it was all one check, it could not be put there in two items very well, could it? Did you ever hear of a bookkeeper taking one check and entering it up in the Individual Ledger in

more than one item? A. I do not recollect that I did.

THE VICE CHANCELLOR: My recollection is that he has already testified that one of these checks was to pay back the amount of the judgment on the Rose mortgage, and the other one was to pay the amount of a mortgage that this witness had individually on the property. Then he made a long explanation as to what he had that mortgage for, that it was in connection with the McKelvey matter. Am I not right about that, Mr. Hogencamp?

THE WITNESS: I think that that was a mistake.

MR. CAREY: I think so, too.

THE WITNESS: I think that was a mistake. I think the money went into my account, and was accounted for to Denton.

BY MR. CAREY:

Q. Well, the $7584.79 was not the money which you received from the judgment which entered into the McKelvey transaction, was it? A. I think that was a subsequent transaction.

Q. And this $7584.79 had no connection whatever with the McKelvey transaction, did it? A. I don't think it did.

BY THE VICE CHANCELLOR:

Q. Do you mean to say that I was mistaken in saying that you had previously stated that that was the fact—namely, that this $7584.79 was the payment to you of a mortgage that you had in connection with the McKelvey matter—didn't you testify to that before? A. If I did, I was mis-

taken. I probably did. There is a similarity of figures, and I made a mistake.

By Mr. Carey:

Q. This mortgage for $7500 that you had in connection with the McKelvey matter was paid off some time later, was it not? A. I think it was.

Q. And wasn't it paid off to you in the year 1906, somewheres about in the early part of June, 1906? A. I do not recollect.

Q. Well, speaking generally, was it not about that time when the $7500 mortgage which entered into the McKelvey transaction was paid off to you? A. I do not recollect.

Q. The last mentioned $7500 mortgage had been reduced to $500, had it not?

The Vice Chancellor: Which one?

Q. The one which entered into the McKelvey transaction—before final payment? A. I do not recollect that, sir.

Q. Do you recollect what property the mortgage which entered into the McKelvey transaction was on? A. I do not.

Q. Was it not the 146th Street and 7th Avenue property? A. I do not recollect.

Q. Well, at any rate, that mortgage was, subsequently to its delivery to you, paid off to you, was it not? A. I do not recollect now, about any $7500 mortgage to McKelvey.

Q. Not from McKelvey, but in connection with the McKelvey transaction—a mortgage from Redfield to you in the McKelvey transaction, dated August 15, 1901, for $7500? A. I think that was subsequent to this other $7600.

Q. Well, now, let us get this straight, Mr.

Hogencamp. In connection with the McKelvey transaction, as you have already testified, a mortgage for $7500 was given to you by Mr. William H. Redfield? A. Yes; I think so.

Q. And that mortgage, before final payment, was reduced by a payment to you of $500, was it not? A. I do not recollect that, sir.

Q. Well, you recollect that such a mortgage was given to you, in connection with that transaction, don't you? A. As I recollect, there was a mortgage given to me as security.

Q. And it was a mortgage made by Redfield to you? A. I think it was, I am not positive.

Q. And the amount was $7500? A. Very likely that is so.

Q. Now, Mr. Hogencamp, didn't Mr. Charles H. York afterwards become the owner of the property upon which that mortgage rested? A. I think he did.

Q. And didn't you enter into an agreement with Mr. York, in 1905, extending that mortgage for three years, and didn't you, in that agreement, covenant that there was then due on the mortgage the sum of $7,000? A. I think I did, I think I did.

Q. And subsequently that mortgage, concerning which I have been questioning you, was paid off to you individually—that is, the balance due on it? A. I do not recollect that now, sir, there were so many of those transactions.

Q. Well, you do not recollect that you have that mortgage yet, do you? A. No, sir; I haven't it now.

Q. So that if you have not got it, it is a fair presumption that the mortgage has been paid off? A. Well, that I was satisfied for what money was

put up. I do not recollect the amounts, nor the dates.

Q. On your re-direct examination you testified to a number of mortgages which were given or assigned to you, which covered property of Mr. Denton's, or in which Mr. Denton was interested in New York City. Did you testify to all the mortgages which came to you from Mr. Denton, or which affected Mr. Denton's New York property? A. I do not recollect.

Q. You mentioned a mortgage for $24,000, Mr. Hogencamp, which came to you, do you remember that? A. Yes, sir.

THE VICE CHANCELLOR: Do you mean to him individually, or to the bank?

Q. The mortgage was made to you individually, was it not? A. I do not recollect that now, sir.

Q. Well, you testified in regard to it yesterday? A. Well, if it was made to me, the assignment would show.

THE VICE CHANCELLOR: All I am trying to do, Mr. Carey, is to make your questions intelligible. When you say to the man, "Did it come to you?" quite often you mean to the bank, and quite often you mean to him individually, and it is impossible for the Court to follow what you mean. He did testify yesterday that there was a $24,000 mortgage in the bank, and he testified when it was paid off to the bank. Now, if you mean that, then you ought not to say "you, individually." If you mean the bank, then you ought to say "the bank." If you mean to ask if he had any individual participation in the matter, you ought to

make your questions clear that you mean that; otherwise, you make your questions so unintelligible that we cannot follow them.

Q. Will you turn to Individual Ledger, A to L, No. 16, page 671, and point out the entry there pertaining to a $24,000 mortgage?

THE VICE CHANCELLOR: What is the date?

MR. CAREY: December 21, according to my minutes.

THE VICE CHANCELLOR: What year?

MR. CAREY: 1900, I think.

A. Yes, sir; I see the entry there.

Q. It is under what date? A. December 26.

BY THE VICE CHANCELLOR:

Q. What year? A. 1900.

Q. On which side of the account is it, the withdrawal or deposit side? A. The deposit.

Q. A deposit to the credit of the account of $24,000 on that date? A. Yes, sir.

BY MR. CAREY:

Q. And what was that deposit for, Mr. Hogencamp, what did it represent? A. That bond and mortgage of $24,000.

Q. It represented a bond and mortgage for $24,000? A. Yes, sir.

MR. LANE: He said that one.

THE VICE CHANCELLOR: The one you have been talking about, he says.

Q. Now, to whom was that bond and mortgage made? A. I cannot tell from here (referring to the entry on the book).

Q. What records would show to whom that bond and mortgage was made? A. The bond and mortgage itself.

Q. Would any record which you have show that? A. No, sir.

Q. That bond and mortgage was subsequently paid off, was it not? A. Yes, sir.

Q. Now, did that bond and mortgage come to your physical possession? A. Yes, sir.

Q. Do you recall the circumstances under which it came to your possession? A. I do not.

Q. Do you know what property it was upon? A. It will show on the General Ledger. By refering to General Ledger No. 7, page 6, I find that it was on 125th Street, New York.

Q. Now, can you tell me, from looking at this record, in whose name that bond and mortgage stood as mortgagee? A. No, sir.

Q. Mr. Hogencamp, was that mortgage, concerning which you have just been testifying, the only $24,000 mortgage which you received affecting property in which Mr. Denton was interested in New York? A. All that I recollect.

Q. Do you remember getting an assignment of a mortgage, made by William H. Redfield to Robert L. Shaw, for $24,000? A. I do not now.

Q. Do you have any recollection concerning a mortgage bearing date the 26th day of August, 1901, made by William H. Redfield to Robert L. Shaw, to secure the payment of the sum of $24,000, covering some three or four pieces of property, located in the City of New York, on Grand Street and 15th Street near 8th Avenue, and No. 76 Convent Avenue? A. I do not recollect the particulars now, sir. I had a great many transactions with Mr. Denton.

Q. Have you any recollection with reference to a mortgage of that kind? A. Not now; no, sir.

Q. Do you remember receiving an assignment of any mortgage running to Robert L. Shaw, and covering property in New York City, the assignment being some time in the year 1901? A. I do not recollect it, sir.

Q. Don't you remember giving Mr. O'Callaghan instructions to draw the assignment of such a mortgage to you? A. I do not recollect it.

Q. Do you recall a trade in which four pieces of property were taken over by Mr. Denton, or somebody in his interest, for the property on 79th Street and Amsterdam Avenue in New York City? A. I cannot say that I do now.

Q. Do you remember how the property at 79th Street and Amsterdam Avenue was obtained? A. No, sir; I do not recollect .

Q. Mr. Hogencamp, you wouldn't say that you did not receive an assignment of such a mortgage? A. I say I have no recollection of it.

Q. How did it come about that you opened these different accounts, Wm. Hogencamp, Rent Account, Wm. Hogencamp, Trustee, and Wm. Hogencamp, Attorney, into which these large sums of money for Mr. Denton went? A. So I would be able to see the disposition of the money that was drawn.

Q. Mr. Denton had been engaged for a number of years in speculative building in New York, had he not? A. Yes, sir.

Q. And the beginning of that was prior to 1900—the beginning of such operations was prior to 1900? A. I think so.

Q. You were very familiar with Mr. Denton's

financial standing, were you not, his financial affairs? A. As far as he told me.

Q. From 1900 on? A. As far as he told me.

Q. And prior to that time? A. As far as he told me.

Q. For how many years prior to that time were you familiar with it? A. I do not recollect now, sir.

Q. And he told you, in detail, did he not? A. He gave me details.

Q. A great many of them? A. A great many of them.

Q. And you had such relation to those matters that you ascertained that those details were correct? A. Not necessarily; no, sir.

Q. Well, you had relation to the building transactions in New York so that you knew a good deal about them, did you not? A. I knew principally what I obtained from Denton.

Q. During and subsequent to the year 1900 did you not take part in all sales or transfers or trades affecting properties in which Mr. Denton was interested? A. I do not recollect, sir.

Q. Did you not, in a good many of them? A. I do not know that I took part in them.

Q. You were present at the closing of the title in most of them, were you not? A. I could not say about that now, sir.

By the Vice Chancellor:

Q. Most of the moneys concerning them went through your hands, didn't they? A. Yes, sir; or there may have been other transactions that I did not know anything about.

Q. Well, I say, a great many of them? A. A great many of them went through my hands; yes, sir.

By Mr. Carey:

Q. And from 1901 that was true of all the properties, was it not? A. As far as I got any money it was put in these accounts.

By the Vice Chancellor:

Q. He means, wasn't it true, after 1901, not that you got—he does not say that—but that there went through your hands all of the money received for Denton for all of these properties in which Denton was interested? A. I am not willing to say that, sir.

By Mr. Carey:

Q. So far as you knew of Denton's transactions, from the year 1901 on, you received all the proceeds of sale and everything that came out of the properties in which he was interested? A. I could not say as to that, sir.

By the Vice Chancellor:

Q. So far as you know? A. As far as I know, I don't know.

Q. He wants to know whether Mr. Denton, to your knowledge, had any other real estate transactions in which he received moneys than those in which you received money? A. No, I don't know.

Q. None that you knew of? A. None that I knew of.

By Mr. Carey:

Q. And as to all of his real estate transactions concerning which you had knowledge, you got all of the proceeds of sale, or trade, whenever any disposition was made of the properties, did you not? A. After paying the expenses. I put in my account everything that I received.

Whether there was anything taken out by him for himself, or for somebody else, that I am not prepared to say just now, because I do not recollect it.

Q. Well, to what do you refer by "expenses"? A. Well, the expenses of the sale.

Q. Yes? A. The expenses of the sale, and Mr. O'Callaghan's charges, or somebody else, I don't know who.

Q. So that after you paid encumbrances upon the property (where you had to pay them) and paid other expenses connected with the sale, or the transfers, you then received the net proceeds of the sales, did you not? A. I received the net proceeds as far as I recollect. I won't change my answer from what it was before.

Q. Now, do you know whether there was any special reason why these transactions were put through these different accounts, instead of the moneys going to Mr. Denton? A. I wanted to see what the disposition of the moneys was.

By the Vice Chancellor:

Q. Oh, no, why didn't Denton do all this in his own name; why did he bother you, is what he wants to know? Why didn't Mr. Denton just attend to his own business? A. Well, for one reason, I suppose that I wanted to have control of the expenditure of the moneys, as he was largely indebted to the bank.

By Mr. Carey:

Q. And had he become indebted to the bank through these building transactions in New York? A. Yes, sir.

Q. And is it not a fact that, from 1901 on, Mr. Denton was himself unable to carry on the

building transactions any further in his own name? A. Without help, he was not.

Q. And you went in and helped him, did you not? A. I furnished the money.

Q. Now, from 1901 on, your interest in these properties was a great deal larger than any interest which Mr. Denton had in them, was it not?

THE VICE CHANCELLOR: By "your" do you mean his, individually?

MR. CAREY: Yes, sir.

A. No, sir.

Q. Did you ever tell Denton that you were advancing money from the bank instead of you individually advancing it? A. Certainly I did.

Q. Well, then, the interest of the bank was far superior to any interest which Mr. Denton had in these properties, was it not? A. That I don't know.

Q. Well, Mr. Denton did not get any of the money out of the properties, did he, so far as you know? A. Directly?

Q. Yes. A. Yes, sir; he got some money out of it directly. There was payments made to him directly.

Q. Well, whatever payments were made to him directly were made to discharge expenses connected with the property, were they not? A. No, sir.

THE VICE CHANCELLOR: You mean net proceeds, don't you? What you really want to ask him, as I understand it, is whether Denton received any profit, paid over to him, out of these real estate transactions?

Q. Did Mr. Denton receive any profit whatever

out of the building transactions from the year 1901 on? A. He received money out of the account; yes, sir.

THE VICE CHANCELLOR: That is not an answer. Mr. Carey is entitled to an answer to that question.

Question repeated.

A. I don't know how to answer that.

THE VICE CHANCELLOR: He cannot answer that.

Q. So far as you know, he did?

MR. LANE: I object to that, unless the term "profits" is made certain. It may mean moneys out of the net proceeds and kept by him as profits; or it may mean profits on the whole transaction.

THE VICE CHANCELLOR: I overrule the objection. He asks him "as far as he knows." He will have to answer the question. He is a very intelligent witness and participated in these matters. He does not need counsel to refine for him. He can refine for himself.

Question repeated.

A. I cannot answer that question in the way it is put.

BY THE VICE CHANCELLOR:

Q. What Mr. Carey is trying to get at, as the Court understands it is this: You have said that after a certain date, certainly with respect to the properties that you had to do with—you, on behalf of the bank, as you put it, had to do with—you handled all of the money except what went for expenses; and what Mr. Carey wants to know

is whether, in any of those transactions, you paid to Denton any net profit, anything that went to him over and above what he owed and what was paid out of the moneys for expenses or encumbrances or what not; that is what he really means. A. I can only answer that in my own way.

Q. Answer it in your own way. A. That Mr. Denton drew checks on this rent account for his own personal affairs, that were paid.

By Mr. Carey:

Q. How do you know they were drawn for his own personal affairs? A. Well, they were payable to H. M. Denton; he got the money on them, and I never asked him what he did with it.

Q. But you were interested to know where all the moneys which came out of these properties went, weren't you? A. Well, sir, I was interested in seeing that they went somewhere where I was in favor of their going.

Q. And you were in favor of their going into the properties to complete the properties and put the properties in condition to sell, were you not? A. Not all of it. Some portion of it, as I say, was drawn out by him on his personal check, and I O. K.'d it.

Q. You O. K.'d those checks after you found that the money represented by the checks was to be applied to these properties in some way, did you not? A. Not necessarily; no, sir.

Q. Well, what else were those moneys applied to? A. Well, I say to his personal account, some.

Q. What do you mean by "his personal account"? A. Why, that is, he might want three,

four or five hundred dollars for household expenses, or anything like that.

Q. Did he get it out of these moneys? A. Certainly he did.

Q. Can you point out a single item of that character? A. I have not got the accounts here now.

Q. Could you, if you had the accounts? A. I could see the checks that were given to him personally that I didn't know anything about the transaction except that it was money that he drew for himself.

Q. How did you come to have these different accounts, the Trustee Account, Attorney Account and Rent Account——why didn't you put it all in one trust account? A. I don't know why.

Q. You received the rents out of the properties, did you not? A. They were deposited in his account; yes, sir.

THE VICE CHANCELLOR: No, no. Answer the question.

A. Yes, I received them, as far as the account shows.

Q. And when did you begin to receive the rents?

THE VICE CHANCELLOR: What year, do you mean, was the first rent he received?

Question withdrawn.

Q. Did you receive rents on these New York properties prior to the time when you opened the Rent Account? A. No, sir.

Q. None? A. Not that I recollect; no, sir.

THE VICE CHANCELLOR: Now, we have got the opening of the Rent Account, so

there is no use bothering any further with that. If you want to contradict, that is enough to contradict from.

Q. After you opened the Trustee Account for Denton, which was November 14, 1901, did you have other trustee accounts in the bank for other people? A. I had another trustee account.

Q. For whom? A. L. C. Gillett.

Q. Now, after 1903, beginning with January, 1903, is it not true that Mr. Denton was in charge of these New York properties upon a salary of $25 per week? A. No, sir.

Q. Didn't you pay him $25 a week for looking after the properties over there? A. No, sir.

Q. Was he paid $25 a week for looking after those properties? A. No, sir.

Q. Do you know of any weekly stipend that was paid to him after January, 1903? A. No, sir.

Q. None? A. Not that I recollect; no, sir.

BY THE VICE CHANCELLOR:

Q. Well, do you mean to say, Mr. Hogencamp, that if, beginning with January, 1903, it was the fact that Mr. Denton received, to your knowledge, $25 every week, that it is possible that you now could forget that fact? A. I have no recollection of any such thing.

Q. But what I want to get at is the state of your mind. Is it possible that if he did, as a fact, receive $25 a week every week, so that in each year there would be fifty-two separate events, that that would entirely pass out of your mind? A. I have no recollection now. If only I could get hold of the checks I can refresh my memory about it.

Q. What I want to get at is whether you were really testifying that he did not, to your knowledge, ever receive it or whether you want to stick to the idea that maybe he did receive it, but you did not recollect it. If it happened fifty-two consecutive times in a year, it seems almost impossible to me that it could be forgotten. However, it may have happened, but you have forgotten it—is that it? A. It may have happened, but I have no recollection of it. The checks will show.

Q. Oh, no, he may not have been paid in checks, he may have received it out of rents that he collected; it may have been paid in cash. All I want to get at is this: here he is asking you whether you, on behalf of the bank, if you please, or on behalf of yourself, if you were personally interested, knew that this man was receiving $25 a week to look after the properties, and was not in a position of being, as you say, the sole person interested in, responsible for, and concerned with the real estate in question. It is a most radical situation, and it seems to me that if you had knowledge of that, some of that, on the main point at least, would remain, so that you could testify positively one way or the other. Just see what the situation is: You say that you never had any personal interest with Mr. Denton, and that the bank never had any other interest excepting the fact that it loaned him money, and he was the sole person who was interested in the responsibility of completing those buildings and disposing of them and what not, and that the sole concern you had with it was to see to it that the moneys received by him were not squandered and the bank left high and dry for the loans it had made to him. Now that is a fair gist of your testimony on this point. Now, Mr. Carey has suggested in his questions

that that is not so, and that after a certain date (which he fixes as January, 1903, Mr. Denton was receiving a weekly salary to look after these properties, which you say were his sole property, and were his sole responsibility and risk; and you say "I do not recollect it." Now, if you mean that it did not happen, I think that you ought to say so; if you merely mean you do not recollect it, then I am calling to your attention the fact that it is a curious state of affairs if so radical and opposite a change to all that you have said did take place, that your memory is a blank about it. A. I remember this, your Honor: That there was no arrangement made with Mr. Denton whereby he was to have a weekly salary or a monthly salary.

Q. You testify now that no arrangement was made by you, or in which you in any way participated, of that character? A. Yes, sir.

Q. That I understand, but when you say that it might have been made, and you have forgotten it, the situation was such a radical change that I could not understand how you could have forgotten it. A. There was no arrangement for salary, none at all.

By Mr. Carey:

Q. Did not, as a matter of fact, Mr. Denton receive $25 a week from January, 1903? A. Not to my recollection.

Q. Did he not at various times— A. I want to change the answer to that. (Last question repeated.) I did not understand you to put the question that way. Was that your exact question?

Q. Yes. A. I thought you put the question "as salary."

The question was repeated to the witness, at his own request, and he answered as follows:

A. I have no recollection of any such thing.

Q. He was at that time collecting the rents of these properties and turning them over to you, wasn't he? A. Collecting the rents and depositing them in the bank frequently himself.

By the Vice Chancellor:

Q. To his own account? A. No, sir; in the Rent Account.

Q. Which is your account? A. Which is mine; yes, sir.

Q. Well, I think it is fair then to say "he turned them over to me"? A. Well, yes, sir; turned them over to me in that way.

By Mr. Carey:

Q. And what was Mr. Denton doing in connection with these New York properties after January, 1903? A. I don't remember whether the buildings were completed then, or not; I cannot remember that now.

Q. Suppose we get the New York properties in which you, for yourself (or the bank, whichever you choose to denominate it) had some connection. Can you recall those? A. No, sir; not now.

Q. 68th Street and West End Avenue—Senior & Company being agents for the building—do you remember that building? A. Yes, I think I do now.

Q. Now, did you, for yourself or the bank, have any connection with that property? A. The rents were turned over and deposited.

By the Vice Chancellor:

Q. To the account of William Hogencamp Rent Account? A. Yes, sir; Rent Account.

By Mr. Carey:

Q. When did you first receive any rent from this building? A. That I cannot say.

Q. Was that the first building that you began to receive rents from? A. I do not recollect.

Q. Now, the property at 149th Street and 7th Avenue—what connection did you or the bank have with that property? A. I think the rents were deposited.

Q. You received the rents from it, did you? A. I think the rents were deposited to my account as Rent Account.

Q. Was not money advanced to complete this building either by you or the bank? A. What building was that, sir?

Q. 149th Street and 7th Avenue? A. I think so.

Q. What do you say? A. I think so; I cannot remember the details of those different buildings.

Q. And is it not a fact that Mr. Denton supervised the construction work, after 1903, on this building, and when the building was completed he collected the rents and turned them over to you, and that was all the connection he had with the property, covering that period? A. No, sir.

Q. What other connection did he have with this property, covering that period? A. He was engaged in the work over there for himself.

By the Vice Chancellor:

Q. You mean that the venture was at his risk? A. Certainly.

Q. And if there was a profit he would have made the profit? and if there had been a loss he would have had to suffer the loss—is that what you mean? A. Yes, sir.

By Mr. Carey:

Q. Now, there was a property on 146th Street, in which you or the bank had some interest, was there not? A. The records will show. I do not recollect these different transactions.

Q. 146th Street and 7th Avenue—do you recall anything about that property? A. There were several properties; I cannot locate them now.

Q. Do you remember Warren & Skilling having charge of this property for the collection of rents, and turning the rents over to you? A. I think I remember seeing some rent schedules signed by Warren & Skilling.

Q. Were not those schedules in connection with the 146th Street and 7th Avenue property? A. I don't know; I don't recollect it.

Q. Do you recall any properties besides these that you or the bank had interest in?

The Vice Chancellor: You mean concerning Denton, in which Denton was in any way concerned?

Mr. Carey: Yes.

A. No, I do not recall any.

Q. Do you recall the property known as 64 Grand Street, in which Mr. Denton at one time had an interest? A. I do not recollect that one, sir.

Q. Do you remember receiving money from a man by the name of Hess in connection with this 64 Grand Street? A. I do not now. It may be,

if I look at something it will refresh my recollection.

Q. Suppose you look at the Rent Account in the Individual Ledger, and see whether that does not refresh your memory? A. There is nothing there. There is dates and figures there, there is nothing else there (referring to Individual Ledger A to L, No. 19).

Q. There are some names there, I think? A. There is three items of credit on the W. Hogencamp Rent Account, page 798, Ledger 18, marked in pencil "Shotwell," March 29, 1904, Shotwell, $108.08; April 13, there is a credit in pencil "Wilson," $3,000; April 28th, same year, "West 68th Street and West End," $15,040.81.

By the Vice Chancellor:

Q. Is that all the information that is on the books of the bank in the Rent Account? A. There is another one down here, June 9th; it says, "68th St., $500," and "July 25, $400, July 25, $400, July 25, $400," each marked "Div."

By Mr. Carey:

Q. Do those pencil notations which you have read refresh your recollection as to the properties out of which those amounts were received? A. Only that "68th Street and West End, "$15,040.81."

Q. What does the name Shotwell recall to your mind? A. Moneys received, I suppose, from him; I don't know what else.

Q. Well, do you recall his having any connection with Denton's properties in New York? A. Well, he was an intimate friend of Mr. Denton; whether he was an attorney or agent, or what, I don't know; I think he was an agent, I am positive.

Q. Now, turn to the Trustee Account and see what notations you find there that will refresh your recollection concerning these real estate receipts? A. (Referring to the Trustee Account.) "1902, March 24, Hess, $291.06." "April 2, 1902, Mt. Vernon, $223.62." "May 23, 1902, Hess, $225.07." "June 2, Shotwell, $2,000." "June 5, Mt, Vernon, $250.70." "June 17, Shotwell, $880." "June 20, do., $500."

Q. Now, Mr. Hogencamp, does the name Hess refresh your recollection as to the source of the moneys credited under date of March 27? A. I cannot say that it does just now.

Q. Wasn't it rent collected by Mr. Hess, or the firm of which Mr. Hess was a member? A. It may be. I do not recollect the transaction just now.

Q. Does the notation "Mt. Vernon" refresh your memory? A. I do not know whether that was rent, or what.

Q. Well, but what does "Mt. Vernon" refer to? A. I imagine to a property situated in Mt. Vernon, which is a suburb of New York.

Q. Did Mr. Denton have any interest in any property up at Mt. Vernon, New York? A. Yes, sir; I think he did.

Q. And at this time, in April, 1902? A. I think so.

Q. And were the rents from that property being turned over to you? A. Mt. Vernon?

Q. Yes. A. I do not recollect.

Q. How does it come that "Mt. Vernon" is entered here opposite this item $223.62"? A. Well, it probably was rent account, although I do not recollect it now.

Q. The notation "Shotwell" opposite the item "$2,000," does that refresh your recollection as to

the source of that credit? A. Only as it is stated there.

Q. And by that means, connected with any of the properties in which Mr. Denton had ever had any interest? A. No, sir; not now.

By the Vice Chancellor:

Q. You mean you cannot recollect it now? A. I do not recollect it.

By Mr. Carey:

Q. You were asked yesterday if checks drawn by Mr. Denton were paid out of any accounts except the rent account, and you said that you could not recall; have you made any investigation to find out whether Mr. Denton's checks were paid out of any account other than Rent Account? A. No, sir; I have not.

Q. And you have no further information, then, on that subject, than you gave us yesterday? A. No, sir.

Mr. Carey calls upon Mr. Lane to produce the four checks heretofore marked A-8, A-9, A-10 and A-11, and they are produced by Mr. Lane and shown to the witness by Mr. Carey.

Q. Were those checks not paid in connection with the property at 149th Street and Seventh Avenue? A. I don't know, sir.

Q. And did you not, or the Bank through you, furnish money for the completion of 149th Street and Seventh Avenue? A. I do not recollect now.

Q. And did not Mr. Denton come to you in connection with the erection of 149th Street and Seventh Avenue and report to you the payments necessary to be made in the construction work

of the building there located, and did he not draw checks on the Second National Bank for funds covering necessary expenditures in connection with this erection work, which checks were all approved by you? A. I had some lists from him, I don't know how many, showing payments to be made.

Q. On this property at 149th Street and Seventh Avenue? A. I don't recollect what the property was, sir.

Q. Did you, or the Bank through you, furnish money to complete more than one property? A. I don't recollect, sir.

Mr. Carey calls upon Mr. Lane to produce the check, Exhibit C-22, and it is produced by Mr. Lane.

Q. I show you Exhibit C-22, and call your attention to the memorandum on the back—in whose handwriting is that memorandum? A. Mine.

Q. Do you know whether that memorandum was there at the time Mr. Denton signed the check? A. Yes, sir; it was.

Q. Do you recall that specifically? A. Yes, sir.

Q. Did you call his attention to it? A. Yes, sir.

Q. And tell him what you meant by it? A. Yes, sir.

Q. Now, there is on that the name "Hanford," and opposite that name "72," I suppose it means "$72," does it? A. Yes, sir.

Q. There is no dollar sign. The check is to "Interest Accounts." A. Yes, sir.

THE VICE CHANCELLOR: The memoran-

dum on the back, that Mr. Carey is examining about, reads as follows:

"Shaw ..... $750.
Denton 452.92
Redfield 708.87
Hanford ..... 72. "

Q. As I recall it, your direct testimony was to the effect that the money represented by this check all went to pay interest due the Bank? A. Yes, sir.

Q. Now was this $72 interest payment on the Hanford Mortgage which we have spoken of in this case? A. No, sir.

Q. What was it? A. A note of Hanford's in the Bank for $24,000.

Q. Mr. Hogencamp, there were produced yesterday three dividend checks for $400 each, which were marked Exhibits C-23, C-24 and C-25? A. Yes, sir.

Mr. Carey calls upon Mr. Lane to produce the Exhibits C-23, C-24 and C-25, and they are produced and handed to Mr. Carey.

Q. Mr. Hogencamp, do you say that those checks ever went through the Bank? A. Yes, sir.

Q. And do you mean to say that they were deposited on the 25th day of July, 1904? A. Yes, sir.

THE VICE CHANCELLOR: Is that supposed to be "1904" (referring to the date of the year on the checks in question)?

THE WITNESS: Yes, sir.

THE VICE CHANCELLOR: Well, it is "190—," we don't know what date it is.

Q. I observe that they are for dividends payable

July 1, 1903, January 2, 1904, and July 1, 1904. You referred to a credit in the Rent Account, I think, under date of July 25, 1904. Do you know where the check dated July 1, 1903, Exhibit C-23, had been from July 1, 1903, to July 25, 1904? A. Yes, sir.

Q. Where? A. In the possession of the Second National Bank.

Q. And is that true of the other two exhibits, C-24 and C-25, from their date to the date of deposit? A. Yes, sir.

Q. And under whose direction were they kept in the possession of the Second National Bank? A. In whose possession?

THE VICE CHANCELLOR: Yes; why weren't they sent out to the stockholder, in other words?

A. They hadn't been called for. The Cashier had them in his possession.

Q. Do you know that was the reason? A. Yes, sir.

Q. How do you know that? A. Because they hadn't been called for, and they hadn't been charged to the Dividend Account.

Q. You were not the Cashier, were you? A. No, sir.

Q. Then, how can you say that they had not been called for? A. Only by a reference to the checks here, that they were not paid until those dates, or until that date.

Q. The stockholder would call upon the Cashier for his Dividend check, wouldn't he? A. Naturally.

BY THE VICE CHANCELLOR:

Q. Wouldn't they be mailed to him? A. Not always; no, sir.

Q. Well, I just want to know what the custom it—is it the custom that every stockholder has got to call at the Bank for his check? A. With the exception of those living out of town everybody called at the Bank and got their dividend. Those that lived off at a distance, the checks were sent to; that is my recollection.

By Mr. Carey:

Q. If a local stockholder did not appear for ten days or a month, wouldn't his dividend check be mailed to him? A. No, sir.

Q. It would simply be held by the Bank until called for? A. Yes, sir.

Q. And that is true of all the stockholders living in Jersey City? A. As far as I recollect.

By the Vice Chancellor:

Q. How did they know that a check was there waiting for them? A. They knew that the dividend had been advertised in the paper.

By Mr. Carey:

Q. That was the only information they would have of dividends? A. They were generally pretty hungry for them.

By the Vice Chancellor:

Q. No, he asked about their information. Is that the only way the Bank conveyed the information to an individual that he was entitled to a dividend? A. Yes, sir.

By Mr. Carey:

Q. Did not the Bank send out notices by mail to the stockholders when dividends were declared? A. No, sir; not as I know of.

Recess until two o'clock P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock P. M.

WILLIAM HOGENCAMP, recalled.

BY MR. CAREY:

Q. The Bank declared a dividend on the 1st day of July, 1900, did it not, Mr. Hogencamp? A. July 30th, it appears (referring to entry in General Ledger No. 7, page 710).

BY THE VICE CHANCELLOR:

Q. What number Dividend was it? A. The 70th.

BY MR. CAREY:

Q. And how much per share was that? A. 6%.

Q. Six dollars per share? A. Yes.

Q. And the Bank declared a dividend every six months after that period, up to January 1st, 1906, did it not? A. I think not; I do not think it was as late as that, but I haven't the information in this book.

THE VICE CHANCELLOR: Why go so far down, anyhow? The stock was sold by him before that—why do you go after that period?

Q. Down to July 1st, 1905? A. I do not recollect that, sir; there is nothing on this book here to show. I am only testifying from the book.

Q. How far down are dividends shown by the book which is before you, General Ledger No. 7? A. June 30, 1904.

Q. And what book do you need to tell you whether dividends were declared after that period? A. It would be in the succeeding General Ledger.

Q. Which is what? A. General Ledger No. 8. (Referring to General Ledger, No. 8, page 26.) January, 1905, is the last one that I see here.

BY THE VICE CHANCELLOR:

Q. The one dividend in January, 1905, apparently is the last one in this book, is that right? A. Yes, sir.

BY MR. CAREY:

Q. Does the book go down to July, 1905? A. I don't see anything of it here, sir.

THE VICE CHANCELLOR: Oh, this book goes down to July, 1905.

Q. What was the dividend of January, 1905? A. Ten thousand.

Q. Well, how much per share? A. Four dollars.

Q. And you have no record of the dividend in July, 1905? A. I do not see anything here, sir (referring to General Ledger No. 8, page 26).

Q. Do you recall whether a dividend was paid in July, 1905? A. I do not.

Q. Then, from July 1st, 1900, to January 1st, 1905, inclusive, dividends were regularly declared by the Bank every six months, were they? A. Yes, sir.

Q. And you produced only three dividend checks during that period—where are the other dividend checks paid on this stock in question? A. I don't know.

Q. Have you looked for them? A. Well, I only

looked to compare with my account here. That is the only thing I found in my account.

Q. You say you have not looked for the dividend checks on the stock sold to Denton? A. Only as regards those three items there in 1904 that appeared in my account as dividend; my attention was specifically called to it for that, and that I looked up.

Q. And you got the checks for those? A. Yes, sir.

Q. And the other checks for dividends on this stock covering this period are available, are they not? A. I could not tell you, sir.

Q. In whose custody would they be? A. The cashier's.

Q. You have produced seven checks signed by Mr. Denton, on the Second National Bank, covering payments made to the Hudson Trust Company, and being marked Exhibits C-27 to C-33, inclusive. Are those all the checks which you could find which went to the Hudson Trust Company in connection with the loan to Denton? A. That is all I found at that time, sir.

Q. All of these, as I understand your direct testimony, were paid out of rent account? Is that true? A. Allow me to see the checks, and I can tell you; I cannot tell from recollection now.

THE VICE CHANCELLOR: That is what he did testify to, if that is what you mean; but do you want to ask him now whether he testified to the truth? My minutes show that he did testify that those were all taken out of the account entitled "W. Hogencamp, Rent Account."

Q. (Showing the witness the seven checks marked C-27 to C-33, inclusive): Will you look at

those checks and see if they were all paid out of Rent Account? A. Yes, sir.

Q. Have you found the check by which $1500 was paid on account of this loan? A. I have not.

Q. Have you looked for it? A. I don't know that I have.

Q. Whose check was that? A. Oh, that I do not recollect, sir.

Q. Have you found the check which made the final payment of the loan? A. The $10,000?

Q. Yes, sir. A. No, sir.

Q. Have you looked for that? A. I haven't had an opportunity; no, sir. I haven't looked for it.

Q. Do you know whose check that was? A. I do not. I do not recollect it.

Mr. Carey calls upon Mr. Lane for the production of the note of $13,000 from Denton to Hogencamp, Exhibit 15, and the same is produced and handed to Mr. Carey.

Q. I show you Exhibit 15, and call your attention to the endorsement on the note, "Interest paid to Aug. 6, 1901"—can you tell me how it happened that interest was computed on that note up to August 6th, the note being dated July 19th, 1901? A. I don't know, sir.

Q. You have no recollection in regard to that? A. None.

Q. There must have been some special reason for computing the interest for a period of seventeen days, was there not? A. I don't know, sir. I have no recollection of that particular part of it.

Q. The credit endorsement of September 7,

1905, $7,652.80—did you ever show that to Mr. Denton? A. I do not recollect.

Q. So far as you know, you never did, did you? A. I have no recollection on the subject; no, sir.

Q. Now, do you know how you made up that sum of $7652.80? A. The difference between what was received and what amount was owing me, as I recollect it now. I do not recollect the details of the transaction.

Q. The difference between the amount received and what was owing to you? A. Yes, sir.

Q. What do you mean by "what was owing to you"? A. Why, he owed me the $13,000 note.

Q. And do you mean that this $7652.80 is the difference between what you received and what he owed you? A. Yes, that is my recollection of it.

Q. Do you know what items that amount was made up of? A. As I recollect it now, it was the difference on the sale of the stock and the settlement of interest account, or the charge of the interest account and the credit.

Q. Interest account on what? A. On this note.

Q. On this note? A. Yes, sir; whether there was anything else into it, or not, I don't remember now.

Q. Well, as I understand it, you got $19,000 for that stock? A. Yes, sir.

Q. And he owed you on the stock how much? A. I think it was $10,000 and interest, or something another, and probably some other items; I don't recollect now.

Q. And you cannot state now how you made up that amount? A. Not now; no, sir; I know

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I made the credit there, but how I arrived at it I don't recollect.

Q. Would you be able at all to make up a detailed statement showing how this amount endorsed as a credit on this note, C-15, is made up? A. I cannot now.

Q. What did you have to pay for the stock? A. $10,000 and something or other; I don't recollect now what the amount was.

Q. Are you sure you paid that? A. Yes, sir.

Q. And can you point to anything in the records of the Bank which show that you paid that amount? A. No, sir.

Q. Do you know whether Mr. Denton was in financial difficulties in March and May of 1900? A. I do not recollect, sir.

Q. Don't you know that judgments were being taken against him in New York at that time? A. I may have known it at that time, I do not recollect it now.

Q. You knew at the time, didn't you? A. I say I may have known it at that time; I have no recollection of it now.

Q. And beginning with June 4th, 1901, were you not aware that a number of large judgments were entered against Denton up to November 22d, 1901? A. I beg to repeat the same answer, that I may have known it, but I do not recollect now.

Q. Did you know of judgments being recovered against Mr. Denton in 1901, in New York? A. I do not recollect now, sir.

Q. Not any at all? A. No, sir.

Q. Don't you remember the Batavia Wood-Working Company judgment, recovered in Octo-

ber, 1901? A. I don't know whether that was a judgment, or not.

Q. You knew they had a claim which they were pressing seriously? A. I knew they had a claim.

Q. Didn't you know about the American Missionary Association judgment of August, 1901? A. No, sir; not that I recollect.

Q. Under a foreclosure proceeding—a judgment for deficiency? A. I do not recollect of it, sir.

Q. Have no recollection of it at all? A. No, sir.

Q. Do you remember the foreclosure of a Chambers Street property, in which Mr. Denton was interested, in 1901? A. I have no recollection of it; no, sir.

Q. Do you recall being asked to come and bid on that property? A. I do not.

Mr. Carey calls upon Mr. Lane for the production of check, Exhibit C-34, for $51,486.50, and the same is produced.

Q. I show you Exhibit C-34, which check is signed "W. Hogencamp," dated April 20, 1905, to the order of Sundry Credits, $51,486.50, and on the back of which is a memorandum as follows:

"Redfield $23,628.96
Redfield, B. & M. ..... 12,500.
Mem (?) Bills, B. & M. 12,230.
Redfield Int. 3,127.54

$51,486.50"

Do you know what this item opposite the name "Redfield" means? A. Call loans.

Q. Call loans to Redfield? A. Redfield, or Denton, or both.

THE VICE CHANCELLOR: State on the record that the writing makes it impossible to tell whether the word before "Bills" is "Mem" or whether it is "Mrs." or "Miss"; it may mean "Miss Bill's" or "Mrs. Bill's Bond and Mortgage," or it may be "Mem. Bills, B. & M.," the witness is unable to determine it.

Q. This check was dated in 1905. Did Mr. Denton have any call loans out at that time? A. Yes, sir; I think so.

The Vice Chancellor suggests that this check was credited in Suspended Debt Account, and that, therefore, the witness had better look there.

BY THE VICE CHANCELLOR:

Q. Look at the Suspended Debt Account, in General Ledger No. 8, page 68. Was this check credited there, or the amount of this check? A. Yes, sir.

Q. What does that item indicate? A. "April 20, Redfield, $23,628.96."

Q. Now, he wants to know what that was for? A. As part and parcel of the items under the head of Suspended Debt Account on page 129 of this Ledger, No. 7. Denton—

Q. He wants to know what that "Redfield" item was—not about Denton or anybody else, but what the Redfield item was? A. $23,628.96.

Q. Now, what was it? A. That was call loans that had been made and credited—if I can refresh my memory from this (referring to his memorandum)?

Q. Yes. A. —and credited in the W. Hogencamp Trustee Account.

Q. Made to whom? A. Made to Denton, or Redfield, or either, or both—made to Redfield, I suppose—and went into my account as trustee for Mr. Denton.

Q. Well, you tell us, then, it was call loans made to Redfield, or on Redfield's notes? A. On Redfield's notes, and went into my account as trustee for Mr. Denton.

By Mr. Carey:

Q. So this check paid that "Redfield" item, did it? A. Yes, sir.

Q. Now, this check went to what—the Second National Bank? A. Yes, sir.

Q. The "Redfield, B. & M., I suppose referred to a bond and mortgage of Redfield's which the Bank held? A. It refers to a bond and mortgage, whether it was his or taken from him, I don't recollect.

Q. How much is it? A. $2,500.

The Vice Chancellor: It is on 124th Street, New York, according to General Ledger No. 7, page 129.

Q. And this "Mem. (?) Bills, B. & M., $12,230"? A. On General Ledger No. 7, page 6, under head of "Bonds & Mortgages," I find that the Bank made a loan of $12,230 on a mortgage on 149th Street, New York, on the 24th day of August, 1904. That was carried over into General Ledger No. 8, page 11, under an item as follows: "Bond & Mtg. 149 St., N. Y. City." On the charge side against the account, under the date of Jany. 1st, 1905, where it is carried over, is "$12,230"; on the credit side is an item as follows: "Jan. 30, Suspended Debt, $12,230"; and on the Suspended Debt Account in the same book, General Ledger

No. 8, page 68, I find an item on the charge side of that account as follows: "Jan. 20, 1905, 149th St., B. & M., $12,230," and on the credit side I find an item under date of April 20, 1905, of "$12,230," which has before it the words that we have had the trouble with heretofore, whether it is "Miss Bill's," or "Mrs. Bill's B. & M," or "Mem. Bills B. & M." I think from this that that word must have meant "Mrs." or "Miss" and the Bills was probably the name of the person that gave the mortgage; at any rate, that is the item, and that was one of the items paid by this check that you have just shown me, Exhibit C-34.

Q. Now, weren't these items matters of indebtedness incurred in connection with the finishing up of the buildings in 149th Street, New York City? A. I do not recollect that, sir.

Q. Did Mr. William H. Redfield ever have any notes in the Bank, either in the call loans or in the discounts? A. Yes, sir; I think he had.

Q. You are not sure about it? A. I am pretty positive he had.

Q. Do you know what became of the notes which represented that indebtedness—the Redfield item? A. I do not recollect, no, sir.

Q. Mr. Hogencamp, when did you first receive the Lakewood mortgage now under foreclosure, and the assignment of the Hanford mortgage? A. I do not recollect the dates, sir.

Q. Then, with reference to the time the instruments bear date? A. I do not recollect that.

Q. Well, was it a year afterward? A. I don't know. If I may be pardoned to say—the only way I could fix any relation relative to the date would be as to the first transactions that I had on these $12,000 notes—that they were there then.

Q. That is, that you had the Lakewood mortgage and the assignment of the Hanford mortgage at the time you took the two original $12,000 notes of Mr. Denton? A. That is my recollection; yes, sir.

Q. And the mortgages were executed at the same time that the notes were made and delivered? A. I don't know about that, sir.

Q. Well, they were executed at that time, or previous to that time? A. At that time, or previous to that time.

Q. And that was the time of the stock transaction—the time that you were given the two $12,000 notes by Denton was the time of the stock transaction? A. Yes, sir.

Q. I understood you to testify yesterday that at the time the $13,000 Shaw mortgage was given which was under foreclosure in the case of *Richards vs. Shaw,* Mr. Shaw wanted a thousand dollars more credit—was that so? A. Yes, sir; that is my recollection of it.

Q. And that is the reason of having Shaw give an aggregate of notes of $25,000, whereas, theretofore, he had only had one note for $24,000 in the Bank—is that so? A. That is my recollection of it.

Q. What did Mr. Shaw want this additional thousand dollars credit for? A. Well, I am a little uncertain about that, whether it was for the improvement of the stable property, or something else. I think there were two transactions, and I can hardly separate the one from the other now in my mind. I think, though, it was for the improvement of the stable.

Q. And your recollection is that, after getting this credit of a thousand dollars, he proceeded to

make the improvements on the stable? A. I know the improvements were made on the stable, at what particular time I am not prepared to say just now.

Q. Did not Mr. Denton pay all of his indebtedness to the Bank on or about the 2d day of April, 1900? A. I do not recollect now, sir.

Q. He made a large payment to the Bank at that time, didn't he? A. I could not tell without reference to the books.

Q. Suppose you look at Mr. Denton's individual account, under date of April 2d, 1900, Individual Ledger No. 16, A to L? A. (The witness complies.)

Q. What do you find? A. I find a charge to Henry M. Denton's account of $500.

Q. What else do you find? A. On the same date a charge of $57,411.09.

BY THE VICE CHANCELLOR:

Q. A charge against him? A. Yes, sir.

BY MR. CAREY:

Q. That is a withdrawal, is it? A. Yes, sir.

Q. Now, don't you know that that payment of fifty-seven thousand and odd dollars went to the Second National Bank?

MR. LANE: I object to that on the ground that that has already been gone over about twice now in the course of this trial.

THE VICE CHANCELLOR: Well, as I have said before, there are so many hundred pages of testimony here that it will save time to let it go in again rather than to hunt it up in the testimony.

A. Without seeing the check I could not say positively, or without seeing the checks.

Q. Don't you remember the transaction? A. No; I do not. There were too many transactions to remember it.

Q. If a payment of that kind went to the Bank where would it be credited first? A. In the General Credits.

Q. And have you the General Credit Book for April 2d, 1900?

MR. LANE: That book for April 2d, 1900, we haven't; it is the one that is lost.

Q. Will you look in your individual account and see if this credit of fifty-seven—

MR. LANE: Let me suggest something: If you look in the Call Loans you will find it, I think; it did not go through his individual account.

MR. CAREY: Do you concede that that was paid to the Bank?

MR. LANE: Why, certainly I will concede it was paid to the Bank, and took up everything that appeared on Call Loans charged to Denton at that time. I do not want to be considered as conceding that it took up the Shaw $24,000.

MR. CAREY: Oh, no; and we do not concede that the Shaw $24,000 is an indebtedness of Denton's.

THE VICE CHANCELLOR: All right; he says it took up all that was charged to Denton on Call Loans at that time.

MR. LANE: I think so.

MR. CAREY: Call Loans, or Discounts,

or whatever they were, in the name of Denton?

MR. LANE: Yes.

BY THE VICE CHANCELLOR:

Q. Mr. Hogencamp, Exhibit C-15 is a note from Denton to himself for $13,000, with interest, on demand, dated July 19, 1901; it has an endorsement on the back of it in your handwriting that interest was paid to August 6, 1901, and another endorsement in your handwriting, crediting, on September 7th, 1905, $7652.80; in connection with that there was introduced Exhibit 16, which was a check dated July 19, 1901, from you to Denton for $13,000, endorsed by Denton— A. Yes, sir.

Q. Now, if you will look at General Ledger, No. 7, page 16, under date of July 20, 1901, you find that you got a call loan of that amount at that time, do you not? A. I think I did, sir.

Q. Well, look, and be sure. A. (Referring to the account designated.) Yes, sir; July 20th.

Q. And on that same page, under date of August 31, 1901, that call loan seems to have been paid off by you, doesn't it? A. Yes, sir.

Q. Now, what I would like to have you do is to show me, if you can, where the funds came from that paid off that call loan? Where did you get the funds that you loaned to Mr. Denton on that note on July 19, 1901, for $13,000? Denton gave you a note on the 19th of July, 1901, for $13,000, and you gave him the cash—you, yourself, not the Bank; now, where did you get the cash to loan him? Didn't you get it out of that call loan you have just identified? A. I borrowed thirteen thousand dollars individually from the Bank.

Q. Now, that $13,000 you borrowed individually from the Bank you paid on the 31st of August, 1901? A. Yes, sir.

Q. Now, where did you get the funds from—that is to say, what check, or voucher, or other thing, shows what account you drew on to pay that? A. It came from a loan to A. L. Conkling, Jr., of $13,000, which was turned over to me.

Q. When was that A. L. Conkling, Jr., note paid off? A. December 23d.

Q. Was that paid off in cash, or did that mean that some other money was borrowed to take its place? A. I think it was part and parcel of that loan of G. F. O'Shaughnessy. G. F. O'Shaughnessy and A. L. Conkling, Jr., as I recollect it, were in the same office in New York.

Q. And you were using them both, were you, to borrow money on? A. No, sir, that was not it; that was their business, not mine.

Q. How on earth did they come to let you have $13,000 to pay your debts with? A. Well, they have let me have money, and I let them have money.

Q. That is what I say—you were using them to borrow money for yourself? A. I don't know about that.

Q. But we know about it, because you have just said they got $13,000 out of the Bank and let you have it to pay the Bank off. A. They let me have it to pay the money, yes.

Q. Now, then, was the J. F. O'Shaughnessy note paid off, or what do you next find about it on this General Ledger, No. 7? A. This account was ruled off and balanced, and the outstanding items were carried down here and transferred, and it appears there under date of the 23d of December, 1901.

Q. When do you next find anything about the J. F. O'Shaughnessy note? A. Here it is (indicating) transferred again, under the date of December 23d, 1901, on page 20. We find it next carried over in General Ledger No. 8, page 50, under date of Jan. 3, 1905. It was paid on the 2d day of February, 1905, and on the same day O'Shaughnessy got a loan of $25,000, a call loan, which appears on the same page, and that appears to have been paid off on the 1st of August, 1905, by an item under that date on the paid-off side of page 50, Call Loans, General Ledger, No. 8.

Q. Please refer to the Debit Ledger and tell me how O'Shaughnessy paid that? A. The Debits, No. 63, under date of August 1st, 1905, show an item "Bills Discounted, J. F. O'Shaughnessy, 4 mos. note, December 1st, $25,000.

Q. So that he secured the money upon discounted bills? A. Upon a note, evidently, from that entry.

Q. Where will we next find anything about what J. F. O'Shaughnessy did with the $25,000 worth of notes that he got discounted? A. If you look at the Bills Discounted, or the Discount Register, or Tickler, whatever you might call it, under the head of December 1st, it might appear there. (The Tickler for December 1st, 1905, being shown the witness, he examined the same.) Here it is, "J. F. O'Shaughnessy" (indicating an entry on the Tickler).

Q. What does that indicate in the Tickler, under date of Aug. 1st, 1905, "J. F. O'Shaughnessy, $25,000," and then after that "$25,000" again—now, what does that mean? A. It means that on the 1st of December, 1905, there was a note of J. F. O'Shaughnessy due for $25,000, and

the next item here would be the indication that it was paid, because it is extended here in the "Paid" column.

By Mr. Lane:

Q. How was it paid, does it say? A. I don't know; it doesn't say.

Q. Does that indicate as to how it was paid? A. That does not indicate anything at all.

By the Vice Chancellor:

Q. That would be December 1st, 1905? A. Yes, sir.

By Mr. Carey:

Q. That might be paid by discounting another note? A. Yes, sir; but it would not appear there.

Q. What was done with it after December 1st? A. There is nothing on the book there to show.

Q. Then you don't know how the $13,000 that you borrowed from the Bank, and which you loaned Mr. Denton, ever got paid back to the Bank, do you? A. I do not.

Q. And you don't know whether it ever did get paid back to the Bank, do you? A. I do not.

The Vice Chancellor: (Referring to Credits Book 49, 1905, Second National Bank.) This book shows that $39,086.35 worth of notes was paid on Friday, December 1st, 1905, "Bills Discounted, for notes due this day and for notes due November 30th, amounting to $39,086.35."

Mr. Lane: That is right, but that would appear even though they discounted notes to take it up. It does not show that that was cash. As a matter of fact, it was not cash.

THE VICE CHANCELLOR: You still think that went into the Suspended Debt Account, do you?

MR. LANE: No, I do not; I have changed my mind on that. I am morally satisfied of what happened to it, though.

THE VICE CHANCELLOR: Well, suppose you ask the question.

BY MR. LANE:

Q. Mr. Hogencamp, has not that some connection with the bills discounted on January 30th, 1906, for $23,000—to your knowledge is not that the same item? A. I do not recollect.

Q. Well, do you know? A. I don't know.

MR. LANE: I cannot get it from the witness.

THE VICE CHANCELLOR: All right; evidently I cannot get any more information in the matter.

BY MR. CAREY:

Q. Mr. O'Callaghan did some personal business for you, did he not, Mr. Hogencamp? A. I don't know that he did.

Q. Do you remember the Burr matter—a case where brokers' commissions were claimed of you, and suit was threatened against you? A. A. I do not recollect it now; no, sir.

Q. Did not a man by the name of Burr make a claim against you for selling your property up at Central Valley, and didn't you employ Mr. O'Callaghan in that connection? A. There was something or other about the Central Valley property; I forget now what it was.

Q. Well, you sold some property up there, didn't you? A. The Bank sold it.

Q. To a man by the name of Conway? A. The Bank sold it.

Q. Well, you held the title for the Bank, didn't you? A. Yes, sir.

Q. And the property was sold to a man by the name of Conway? A. I do not recollect the name.

Q. And a man by the name of Burr made a claim for commissions for the sale of that property, and threatened suit against you? A. Possibly, but I cannot say that I recollect it now.

Q. Don't you remember employing Mr. O'Callaghan in that connection? A. I won't deny it, but I say I have no recollection of it now.

Q. Then there was a question of ousting a tenant from the Central Valley property, was there not? A. Oh, it is so long ago I forget all about that.

Q. At the time this property was sold was there not a tenant, a woman, in there, who refused to remove? A. I do not recollect that, sir. There was a tenant in it, but whether she refused to move, or not, I do not remember.

Q. Well, don't you remember employing Mr. O'Callaghan in connection with the Central Valley property? A. No, I do not. I may have employed him. I do not recollect it.

Q. Do you recall that it was necessary to adjourn the closing of the title for two weeks, or so, in order to get this tenant out? A. No, I have no present recollection of the transaction; it has gone completely out of my mind.

BY THE VICE CHANCELLOR:

Q. When was it, about—when was the matter of this sale of the Central Valley property to you?

MR. CAREY: About 1900, or in 1901.

A. I do not know.

Q. Well, I mean, was it about that—nine or ten years ago? A. I should say so, yes, sir.

Q. I am not trying to pin you down to a date, I just want to know generally. A. I should say it was something like that. The time has gone so far I cannot recollect it.

BY MR. CAREY:

Q. Mr. Hogencamp, did not Mr. O'Callaghan, for you, attend at the closing of the title for the Central Valley property? A. I repeat what I said before, I have no present recollection of it.

Q. Did not Mr. O'Callaghan charge you, for the services concerning which I have just been questioning you, one hundred and fifty dollars, and is not the item under date of September 5th, 1901, which you charged against Mr. Denton and which you said was represented by the check, Exhibit 11-T, to O'Callaghan's order for one hundred and fifty dollars, that item? A. I do not recollect, sir.

Q. Now, what do you say? A. If Mr. O'Callaghan rendered me a bill, and he will show it to me, I can soon tell what it was. My memory is faulty.

Q. Haven't you a bill rendered by Mr. O'Callaghan to you in connection with this matter? A. Not that I know of, sir.

Q. Will you look among your papers and see if you can find such a bill? A. I don't know where to look for it. I will look for it. What was the date of that $150?

THE VICE CHANCELLOR: That was dated on the 5th of September, 1901.

Q. Did you receive rents from the Beard Building when Mr. Denton was interested in it? A. I do not recollect. Whatever rents I received was put into the Rent Account. I cannot recollect them now.

Q. You have already admitted, I believe, that you received a mortgage for $14,000 in connection with that building, is that so?

THE VICE CHANCELLOR: He, or the Bank?

A. The Bank. I did not receive it.

THE VICE CHANCELLOR: Which do you mean, Mr. Carey? He has said that the Bank had a mortgage of $14,000 on the Beard Building, as I recall it.

Q. And that mortgage was in your name, was it not? A. I do not recollect now, sir.

Q. And when that property was sold you received all the proceeds of the sale, did you not—the net proceeds? A. I think I did; I am not positive of it now. Unless I have something before me I cannot answer those questions.

THE VICE CHANCELLOR: Oh, well, do the best you can.

Q. And you received the rents from the property at 119th St. and 7th Avenue, did you not? A. I say, as I said before, whatever rents were received was turned into my Rent Account; I cannot separate the individual transactions for the individual properties.

Q. You remember the property at 119th Street and 7th Avenue, don't you?

THE VICE CHANCELLOR: He means do you remember that Denton was interested

in a property at 119th Street and 7th Avenue?

A. I do not recollect the property now, sir.

Q. This was a flat property, which was ultimately sold to Mrs. Burgess—do you recall any interest of Mr. Denton in that property now? A. I do not recollect the transaction; no, sir.

Q. Do you remember having a mortgage—either yourself or the bank—upon that property at 119th Street and 7th Avenue, for $7,500? A. I can tell by looking at the bonds and mortgages here, that is the only way I can tell.

Q. Will you look at it? A. (Examining the bonds and mortgages account in the ledger). I had a mortgage of $7,500 from somebody or other, I don't know who it was from now.

Q. Answer the question? A. I do not recollect.

By The Vice Chancellor:

Q. The bank did not have any mortgage on this building, as far as the books show? A. No, sir.

Q. And if you had a mortgage it was the $7,500 mortgage you have talked about heretofore, is it? A. Yes, sir.

By Mr. Carey:

Q. Do you mean the mortgage which figured in the McKelvey transaction? A. I think that was it; yes, sir.

Q. Was not that mortgage which figured in the McKelvey transaction on the 146th Street and 7th Avenue property? A. I don't know.

The Vice Chancellor: This witness has always said with respect to that matter that he had a mortgage for $7,500, but he did not know on what property that was.

He has said that over and over again; I think this is the twentieth time he has said that in my hearing; so I think it is hardly worth while to ask him that again, if he don't know. That fact must be within your knowledge. The thing I am in doubt about is whether he had two $7,500 mortgages.

MR. CAREY: He did have.

THE VICE CHANCELLOR: Well, I say that is the thing I am in doubt about, because he has testified both ways about that; he doesn't seem to know.

MR. LANE: Well, if he did, they ought to know.

THE VICE CHANCELLOR: Well, I am talking about the state of the court's mind. First he said he had a $7,500 mortgage connected with the McKelvey transaction; then, today, he says that was a later transaction and another mortgage.

THE WITNESS: I was mistaken; I think there was only one mortgage of $7,500; that is my present recollection.

BY MR. CAREY:

Q. Who drew the mortgages for you, which you or the bank took on New York property in which Denton was interested? A. I do not recollect now, sir.

Q. Did not Mr. O'Callaghan do it? A. I have answered it that I do not recollect.

Q. Did not he draw a number of mortgages for you on property in New York? A. I do not recollect at this time.

Q. Do you know who drew the mortgage in the McKelvey matter? A. I do not recollect.

Q. Did not Mr. O'Callaghan come over here to see you at the bank in connection with the McKelvey matter? A. I do not recollect it, sir.

Q. Did you get rents from property at 127th Street near Columbus Avenue, in New York, in which Mr. Denton at one time was interested? A. I cannot recollect the properties on which the rents were paid in.

THE VICE CHANCELLOR: Why ask this over and over again? The witness has testified time and again that he got rents and they went into the Rent Account, and he does not now carry any present recollection of where they came from, excepting as the notations on the accounts show, and he has been over those accounts and told you what the notations were. Now, it is a waste of time to ask him as to the specific properties.

Q. Did you receive a mortgage for $5,000 on that 127th Street near Columbus Avenue property—you or the bank? A. I find no entry, and I have no recollection.

BY THE VICE CHANCELLOR:

Q. The fact that you find no entry shows that the bank did not receive it, doesn't it? A. Yes, sir.

Q. And you have no recollection as to whether you received it personally, or not? A. No, sir.

BY MR. CAREY:

Q. Did you, or the bank, receive a mortgage on the property on 48th Street, between Tenth and Eleventh Avenues, amounting to $2500? A. Yes, sir; the bank received a mortgage for $2500.

Q. When? A. It is entered here under date of 1901, August 5th.

Q. Do you know whether that was in your name, or not? A. I do not.

Q. And when was it paid? A. It is credited here on February 13th, 1903, on General Ledger No. 7, page 6.

Q. Do you remember the occasion when that property was sold? A. I do not.

Q. Before the recess, Mr. Hogencamp, I questioned you about an assignment of a $24,000 mortgage, the assignment being made to you by Robert L. Shaw, and bearing date August 27, assigning a mortgage covering some New York property—some four pieces of property: I show you a paper which purports to be a copy of that assignment; will you look at that and see if that will refresh your memory in regard to that transaction? A. I do not recollect it, sir. The original can be produced, I suppose, if there is such. I do not recollect it.

MR. CAREY: That is all.

Adjourned until Tuesday, September 27, 1910, at ten o'clock, A. M.

Jersey City, September 27, 1910.

Hearing of the cause resumed at ten o'clock, A. M.

WILLIAM HOGENCAMP, recalled

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Hogencamp, since the last adjournment have you made an investigation to ascertain how the moneys were paid to the Hudson Trust Company in payment of their loan, to release the stock? A. Yes, sir.

Q. Have you the check that paid that? A. Yes, sir.

Q. Produce it?

The witness produces a paper reading as follows: "Jersey City, Jan. 27th, 1905. Cashier's Check. Second National Bank. Pay to the order of Hudson Trust Company Ten thousand dollars ($10,000.00)" signed "W. Hogencamp" and on the back is a stamped endorsement as follows "Pay Frank Hodson," Cashier or order, Jan. 27, 1905. Hudson Trust Company, Hoboken, N. J.; and another stamped endorsement as follows: "Received payment through New York Clearing House, Jan. 27, 1905, Receiving Teller First Nat. Bank of Hoboken." The check also contains the three punched holes indicating that it has been paid by the Second National Bank of Jersey City.

The check is offered in evidence by Mr. Lane, admitted, and marked Exhibit C-45, September 27, 1910.

Q. Now, Mr. Hogencamp, can you tell us how the Second National Bank got the money upon which this cashier's check was drawn? A. Yes, sir.

Q. Will you refer to the books of the bank and show us, or tell us from your own knowledge? A. I think I had better have the General Ledger for that.

Q. Of 1905?

THE VICE CHANCELLOR: Yes, the last one, that is No. 8.

General Ledger No. 8 handed the witness.

THE WITNESS: (After examining General Ledger No. 8). I want the Individual Ledger.

Q. Well, do you know of your own knowledge, without reference to the books of the bank? A. Yes, sir; I do.

Q. How did the bank get it? A. By deposit made to the credit of Cashier Account, January 21, of $10,000.

Q. From whom—whose money was that? A. That was money that I borrowed on that stock, of George B. Wilson.

Q. Will you show the deposit of that money in the deposit slips (handing to the witness package of deposit slips)? Have you got the ticket there? A. Yes, sir, (selecting a ticket from the package).

Q. What is that? A. It is a deposit ticket—"Deposit," it says "to credit of Cashier's Account with the Second National Bank. Check marked "M" at the side "$10,000", with a pencil memorandum on to it "Hudson Tr. Co."

Q. And is that the deposit of that check that paid the Cashier's Account? A. Yes, sir.

The deposit slip is offered in evidence by Mr. Lane, and it is admitted without objection, and is marked Exhibit C-46. It is a deposit slip to Cashier's Account, Check M, $10,000." It has a pencil memorandum on it "Hudson Tr. Co.".

Q. Now, will you turn to the Dealer's Check List and show us the check from Wilson? A. Yes sir (indicating an item under date of January 31, 1905, on the Dealer's Check List).

Q. What does it say? A. "G. B. Wilson & Co., $10,000."

BY THE VICE CHANCELLOR:

Q. What does the presence of that item in the book called "Dealers' Check List" mean? A. It was a check of G. B. Wilson & Co. on the Second National Bank of Jersey City.

Q. But what happened to it? What does its presence in the Dealers' Check List mean? A. Showing that we had a check of G. B. Wilson & Co. of $10,000.

Q. It does not show what account it went to, or anything about that? A. It only shows that they had it on here; yes, sir.

Q. What is that book? A. Dealers' Check List, 1904, M. to Z.

BY MR. LANE:

Q. Now, do you remember at this time, Mr. Hogencamp, how you made up the difference between the $10,000 and the $19,000 that you received for the stock? A. It was a settlement of—

THE VICE CHANCELLOR: I do not understand that question. He may understand it, but I do not. (To the witness). Did you sell the stock to Wilson?

THE WITNESS: No, sir; I borrowed the money on it.

THE VICE CHANCELLOR: Then I cannot understand Mr. Lane's question.

BY MR. LANE:

Q. You sold your stock after you received it from the Hudson Trust Company, for $19,000, did you not? A. Yes.

Q. And you have testified that you borrowed $10,000 to pay for that stock to release it? A. Yes, sir.

Q. That left a balance of $9,000: Now, will you tell us what you did with that $9,000? A. There was a settlement that I made myself, that Mr. Denton did not know anything about, charging myself with the $19,000 and giving myself credit for the $10,000 that I had paid, and the difference was credited on the note of $13,000 that I had of Denton, in figuring up interest, back and forth, and I don't know exactly what the items were now; I haven't been able to find that memorandum yet.

Q. Now, Mr. Hogencamp, will you turn to the Bills Discounted and show us the $35,000 item in the General Ledger, No. 8?

THE VICE CHANCELLOR: You do not mean that, because he cannot turn to the Bills Discounted and show us an item that does not appear on there; they are two different books.

Q. Will you show in General Ledger No. 8, under the title of "Bills Discounted," the item of $35,000? A. (The witness turns to page 73 of the General Ledger No. 8, and indicates an item under the date of March 24, 1906, which reads as follows: "Supt. Debt, 35,000."

BY THE VICE CHANCELLOR:

Q. Do I understand the witness to say that that is the complementary entry to the item on page 68, under the heading Suspended Debt Account, as follows: "1906, March 24th. Bills Disc., 35,000"? A. Yes, sir.

Q. Have you refreshed your recollection as to whose bills those were that were discounted? A. I think it was merely a bookkeeping entry.

Q. It was your own note, wasn't it? Didn't you give a note for $35,000? A. I gave a note for $35,000; I am not certain as to the date.

Q. But that "Bills Dis." item, as I understand the transaction, was the discount of your note for $35,000, which was then credited, or the proceeds of which were then credited to the Suspended Debt Account—is not that the truth? A. Well, I don't think it was discounted. If it had been it would have been on the Discount Journal.

Q. Well, then, do you mean to say the whole thing was just a fraud? A. No, sir.

Q. What was it? If a bookkeeper wrote under the head of "Bills Discounted" an item "March 24, 1906, $35,000," as that item appears in that book, what would that indicate; what would be the normal meaning of the appearance of that item at that place? A. It would indicate a charge to Bills Discounted of $35,000.

Q. And would not that only be a proper charge when notes of hand, promissory notes, aggregating $35,000 had, as a matter of fact, been discounted on that date? A. Well, I don't know how the bank treated it.

Question repeated. A. That would be the natural inference.

Q. Well, would not any other state of facts re-

sult in that entry being a fraud: If bills to the amount of $35,000 had not been discounted on that day, then that was a false entry, wasn't it? A. Well, I don't know the—

Q. No, answer my question: I am not asking now about what actually took place, I am talking about a matter that is true or untrue, without regard to this particular case, but as a general business banking proposition? Would not any other state of facts result in that entry being a fraud: If bills to the amount of $35,000 had not been discounted on that day, then that was a false entry, wasn't it? A. I don't know how to answer that.

Q. All right, let me put the question to you again: The Bank kept this General Ledger? A. Yes, sir.

Q. And in it kept an account "Bills Discounted"? A. Yes, sir.

Q. In that account the bills which were brought to that bank and discounted by it were entered under the date when they were discounted? A. Yes, sir.

Q. Therefore, is it not a fact that normally no items should appear there under the head of "Bills Discounted" unless there were bills actually discounted upon that day of that amount? A. Ordinarily; yes, sir.

Q. How could it be extraordinarily? How could it ever be a proper entry to say "Bills Discounted, $35,000," unless bills to the amount of $35,000 were discounted? A. I could not tell you, sir, about that; I did not make that entry.

Q. Oh, we are not talking about you or me making the entry; can it make any difference whether I or somebody else made a thing that is

either black or white? I am asking you whether a thing is black or white. Now, it doesn't answer to say that you didn't make it or I didn't make it. I want to know if this is not the absolutely incontrovertible situation: that that item must either be an honest item, and indicate that there were $35,000 worth of bills discounted on that day, or else it is a dishonest item because no such bills were discounted? Now, is not that absolutely incontrovertible that it must be one or the other? A. Yes, sir; that is so.

Q. Now, what I want to know from you is whether you have any knowledge as to whether that is a truthful item or a false item? A. I think it is a truthful item.

Q. All right,—now, whose bills were they? A. Well, as a matter of recollection of it I see an entry here in Suspended Debt, charging Bills Discounted, $35,000.

Q. Yes. A. I had guaranteed the $35,000 in the first place, and, under that guarantee, my recollection is that at that time I gave them a note for $35,000.

Q. Then, that was your note that was discounted on that day—your note for $35,000 was discounted on the 24th of March, 1906; and that entry was made, and the withdrawal entry was made under the Suspended Debt Account,—is not that the fact? A. I think that is the fact.

By Mr. Lane:

Q. Now, do you know that your note was discounted? A. I do not.

Q. And does the discount of your note appear in any other books of the bank? A. Not that I have been able to find out.

Q. Have you examined to find out whether it appeared in the Discount Journal, where it ought to appear? A. Yes, sir.

Q. And it don't appear there? A. It don't.

Q. In view of the fact that the note does not appear in any other books of the bank, with the exception of the daily credits and daily debits—

THE VICE CHANCELLOR: The note does appear there, does it?

MR. LANE: It does appear there.

Q. —and Suspended Debt and Bills Discounted in the General Ledger, what would you say as to whether your note had actually been discounted, in that sense of the term? A. I do not think it had been actually discounted.

Q. And what would you say, then, as to those entries in that book? A. Well, they undoubtedly had the note of $35,000 there. I do not think it was actually discounted on the Discount Journal.

Q. What was the purpose, then, of making those entries? A. To take it out of Suspended Debt Account and clean that account out, making it a live transaction.

Q. Now, Mr. Hogencamp, I show you check dated February 10th, 1902, to the order of Stroh & Huber Note, $252.50, signed "W. Hogencamp", Trustee, and ask you what the purpose of the giving of that check was? A. It was to take up a note of Henry M. Denton for $250, and interest, dated December 10, 1901, payable two months after date.

Q. To the order of whom? A. To the order of Robert L. Shaw, and endorsed by Robert L. Shaw and Stroh & Huber.

Q. Is that Mr. Denton's signature on the note, and Mr. Shaw's signature? A. Yes, sir.

Q. What account was that paid out of, Mr. Hogencamp? A. The Trustee Account.

MR. LANE: I offer the check and note both in evidence.

The two papers are admitted in evidence without objection, and are marked as one exhibit, C-47, September 27, 1910. The check is a check of W. Hogencamp, Trustee, to "Stroh & Huber Note," for $252.50, dated February 10, 1902; the note, which is part of the exhibit, is for $250, at two months, dated December 10, 1901, to the order of Robert L. Shaw, signed "Henry M. Denton." It is endorsed "Robert L. Shaw", "Stroh & Huber," and by some others. It bears interest. The check has three holes in it, showing its having been cashed by the Second National Bank.

Q. Mr. Hogencamp, was that note discounted at the Second National Bank? A. No, sir.

Q. I show you another check, dated February 10, 1902, signed "W. Hogencamp, Trustee," to the order of "Stroh & Huber Note," for $147.71—that was signed by you, was it? A. Yes, sir.

Q. And what was the purpose of that check,—to take up that note that is attached to it? A. To take up that note of Henry M. Denton.

BY THE VICE CHANCELLOR:

Q. Now, the note that is attached to it is a promissory note signed "Henry M. Denton," to the order of Robert L. Shaw, for $146.25, with interest, dated December 10, 1901, at two months: Is the signature of Robert L. Shaw on the back of that in his handwriting? A. Yes, sir.

Q. Is the signature of Stroh & Huber in the handwriting of that firm? A. I think it is, sir; I am not well acquainted with that.

Q. This check is signed "W. Hogencamp, Trustee", is it not? A. Yes, sir.

Q. What account did that come out of? A. The Trustee Account.

The check and note attached to it are offered in evidence by Mr. Lane, admitted without objection, and are marked as one exhibit, C-48, September 27, 1910.

By Mr. Lane:

Q. Now, I show you a check dated January 30, 1902, "Pay to the order of H. M. D., Int. Five hundred and sixty dollars, W. Hogencamp, Trustee," and ask you what that check was used for? A. To pay a check of Henry M. Denton dated January 30, 1902, "Pay to the order of the Emigrants Industrial Savings Bank, Five hundred and sixty dollars," signed "Henry M. Denton," and endorsed "Emigrant Industrial Savings Bank" and "Central National Bank, New York."

Q. And finally came to what bank, ultimately? A. The Second National Bank of Jersey City.

Q. And was paid? A. And was paid.

Q. And was that check used as the voucher? A. This check was attached to Denton's check as my voucher.

Q. Who wrote "Trustee Account" across the face of the Denton check? A. I did.

By The Vice Chancellor:

Q. Well, but as a matter of fact they did not pay the Denton check, they paid your check. A. If your Honor will excuse me: When that check

came in I pinned my check fast to it, and gave my check for it—and pinned this check fast to it.

Q. Then, as matter of fact, they paid your check? A. Well, this is the check that came into the Clearing House (referring to the Denton check).

Q. As a matter of fact, the Second National Bank paid your check? A. Yes, sir.

By Mr. Lane:

Q. What you mean when you say they paid Henry M. Denton's check is that they did not return it to the bank from whence it came, did they? A. They did not.

By The Vice Chancellor:

Q. Is not this the fact: That in some transaction Denton had given a check, dated January 30, 1902, to the order of the Emigrants Industrial Savings Bank for $560 that went through the Clearing House and reached your bank? A. Yes, sir.

Q. And when it reached your bank it was made good by your giving the check dated January 30, 1902, signed "W. Hogencamp, Trustee" to the order of "H. M. D. Int." for the same amount of money? A. Yes, sir.

Q. And that check of yours was paid, and the money was transmitted as if it had been paid on the Denton check? A. Yes, sir.

The two checks are offered in evidence by Mr. Lane, admitted without objection, and are pinned together and marked as one Exhibit, C-49, September 27, 1910.

By Mr. Lane:

Q. I show you a check dated March 10 1902, to

the order of "H. M. Denton, Painting," for $400, signed "W. Hogencamp, Trustee," and ask you what that check was used to pay? A. The check of Henry M. Denton, dated March 8, 1892, "Pay to the order of I. Osserman, Three hundred dollars," signed "Henry M. Denton," and another check dated March 12, 1892, "Pay to the order of I. Osserman, One hundred dollars," signed "Henry M. Denton," and marked "Trustee Account" across it.

Q. Is that Mr. Denton's signature? A. Yes, sir.

Q. Who put the words "Trustee Account" on it? A. I did.

By The Vice Chancellor:

Q. What have you to say about the date of these Denton checks? A. Well, one was dated—

Q. No, what have you to say about it—have you any explanation to make of why you took them up ten years after they were given? A. No, I don't know, I couldn't say—"Henry M. Denton, Painting" I couldn't tell you now.

Question repeated. A. I think that that date there is an error. The checks are dated 1892, and my assumption is that it was 1902, the same time that I gave the check to take them up.

By Mr. Lane:

Q. They appear upon the back as paid when? A. March 8, 1902, and March 13, 1902.

The Vice Chancellor: It is quite obviously a mistake.

Q. Now, was that transaction similar to the transaction respecting C-49? A. Yes, sir.

The three checks just identified by the

witness are offered in evidence by Mr. Lane, and are admitted without objection, and are marked as one exhibit, C-50, September 27, 1910. The first is a check of W. Hogencamp, Trustee, for $400, drawn to "H. M. Denton, Painting," dated March 10, 1902, and it has been punctured with the three holes, showing its payment. Attached to that are two checks of H. M. Denton to I. Osserman, one dated March 8, 1892, for $300, and the other dated March 12, 1892, for $100, with the various endorsements showing that they passed through the banks back to the Second National Bank of Jersey City.

By The Vice Chancellor: That was paid out of the Trustee Account, you say?

A. Yes, sir.

By Mr. Lane:

Q. Now, I show you several checks, one dated May 3d, 1902, to the order of Henry M. Denton, for $600, purporting to be signed by Henry M. Denton, and written on the face of it "Trustee Account" in lead pencil, and purporting to be signed on the back "Henry M. Denton"; another check dated June 7, 1902, to the order of Henry M. Denton, for $1,062.00, purporting to be signed "Henry M. Denton, and purporting to be endorsed by him, and bearing on the face in red ink the words Trustee Account"; another, dated April 22, 1902, to the order of Henry M. Denton, for $350, purporting to be signed by Henry M. Denton and purporting to be endorsed by him, and bearing on the face in black ink "Trustee Account"; another, dated June 12, 1902, to the order of Henry M. Denton, for $165, purporting to be

signed "Henry M. Denton" and endorsed by him, and bearing on the face in black ink "Trustee Account"; another, dated June 20, 1902, to the order of Henry M. Denton, for $263.47, and purporting to be signed and endorsed by him, and bearing on the face in black ink "Trustee Account", and ask you whether those checks are signed by Henry M. Denton? A. Yes, sir.

Q. And are they endorsed by him? A. Yes, sir.

Q. And who wrote the words "Trustee Account" upon them? A. I did.

Q. And out of what account were they paid? A. Out of my account as trustee.

Q. And who got the money? A. Henry M. Denton.

The five checks just identified by the witness are offered in evidence by Mr. Lane, admitted without objection, and are marked as one exhibit C-51, September 27, 1910, A to E, inclusive.

Q. I now, Mr. Hogencamp, show you a series of checks, each one of which is drawn by W. Hogencamp, Trustee, to the order of H. M. Denton, and each bearing the name on the back of "H. M. Denton," and the dates and amounts of them are as follows: April 26, 1902, $700; August 6, 1902, $150; March 15, 1902, $600; March 15, 1902, $375; on this last named check there is a pencil memorandum in your handwriting "H. M. D. 225; Doss, $150"; March 31, 1902, $275; April 12, 1902, $400; April 12, 1902, $450; April 12, 1902, $200; and April 12, 1902, $130, are those your signatures to those checks, "W. Hogencamp, Trustee"? A. Yes, sir.

Q. And is each check endorsed by Mr. Denton? A. Yes, sir.

Q. And who got the money on them? A. Mr. Denton.

Q. Mr. Denton himself did not get the money on those four, did he (indicating the checks of March 31, 1902, for $275; April 12, 1902, for $200; April 12, 1902, for $450, and April 12, 1902, for $130)? A. No, he endorsed them over to some other parties.

Q. They are not to you? A. No, sir.

The nine checks just identified by the witness are offered in evidence by Mr. Lane, admitted without objection, and are marked as one exhibit C-52, September 27, 1910, A to I, inclusive, in the order designated in counsel's question.

Q. I show you a check dated March 29, 1902, to the order of Cash, for $1700, signed "Henry M. Denton," on the face the words "Trustee Account" and the word "Paid," this check not having been punctured by the paid marks of the bank; to which is attached a check dated March 29, 1902, "Pay to the order of H. M. D., Seventeen hundred dollars, W. Hogencamp, Trustee," which check is punctured by the paid marks of the bank: Explain that transaction? A. It was money given to H. M. Denton, $1700.

Q. Is that his signature on the first check I showed you, dated March 29, 1902? A. Yes, sir.

Q. And out of what account was that paid? A. "W. Hogencamp, Trustee."

The two checks just identified by the witness are offered in evidence by Mr. Lane, admitted without objection, and are marked as one exhibit, C-53, September 27, 1910.

Q. I now show you a check dated January 24,

1903, "Pay to the order of H. M. Denton, one hundred and forty-six dollars and five cents," signed "W. Hogencamp, Attorney," with the word in lead pencil "Atty" marked on it, and what purports to be the signature of Henry M. Denton on the back: Is that his signature? A. Yes, sir.

Q. When he received that check was the words "W. Hogencamp, Attorney" there? A. Yes, sir.

Q. And out of what account was that paid? A. Out of the Attorney Account.

The check is offered in evidence by Mr. Lane.

MR. CAREY: I would like to ask the witness a question about that.

BY MR. CAREY:

Q. I see there is a word scratched out after your signature,—what was that? A. It looks like —I don't know, "a" something or another.

Q. "Agent", is it not? A. I could not tell you; it might have been "Agent," but I couldn't make out now from that what it was.

THE VICE CHANCELLOR: Yes, it is very plain that the word is "Agent."

THE WITNESS: Yes, sir.

Q. That word is scratched out in black ink, is it not? A. Yes, sir.

Q. And underneath it is written what?

THE VICE CHANCELLOR: "Attorney."

Q. How do you know the word "Attorney" was there when that was delivered to Mr. Denton? A. I am satisfied from my recollection that putting "Agent" on there was a mistake; I had no Agent Account.

Q. You remember the incident, do you? A. I think I do, yes, sir.

Q. And you remember scratching out the word "Agent"? A. I think I do; yes, sir.

Q. And writing the word "Attorney" after it? A. Yes, sir.

Q. And you know that that all took place before the delivery of the check to Mr. Denton? A. That is my recollection of it; yes, sir.

Q. Where were you when you did that? A. I think in the bank.

Q. Did you deliver that to Mr. Denton in person? A. Yes, sir.

Q. Did he see you scratch out the word "Agent"? A. I could not tell you.

Q. But when you delivered it to Mr. Denton it had the word "Attorney" on it? A. Yes, sir.

The check is admitted in evidence without objection, and is marked Exhibit C-54, September 27, 1910.

By Mr. Lane:

Q. Now, I show you a check dated September 10, 1903, to the order of R. L. Shaw, for $27.76, signed "Henry M. Denton," purporting to be endorsed by R. L. Shaw, and purporting to have on its face the word "Attorney"—whose signature is that on the face? A. Henry M. Denton's.

Q. And on the endorsement? A. R. L. Shaw's.

Q. And the word "Attorney"—who wrote it? A. I am not positive whether that is my writing, or not, sir; I think it is, but I am not dead sure about it.

The Vice Chancellor: He does not know whose writing it is; it may be his, and it may be somebody else's.

Q. And what account was it paid out of? A. My account as trustee.

The check is offered in evidence by Mr. Lane.

MR. CAREY: I object to it as not being connected with the issues in this cause.

THE VICE CHANCELLOR: I cannot see what relevancy or materiality that has. It is not shown that that is a recognition, either by Denton or Shaw, of the Attorney Account—if that is the purpose of it—because it is not shown that that word "Attorney" was upon there when Denton signed the check, or when Shaw got the check.

MR. LANE: It is shown, if your Honor please, that it was paid out of the Attorney Account; and my recollection is that it is shown also that Denton had no account in the bank at that time other than the Attorney Account; so it must be a recognition of its being paid out of some account.

THE VICE CHANCELLOR: Well, I was wondering whether it would not be material in that view, if that is the fact.

MR. LANE: That is the only view I offer it upon.

THE VICE CHANCELLOR: If I admit it, it can do not harm, that I can see; and it may possibly be evidential if, after looking the accounts over, we find that at this time, September 10, 1903, Denton had no personal account in the bank against which this could have been charged. I will admit it for that reason.

The check is marked Exhibit C-55, Sep-

tember 27, 1910. This exhibit is a check from Henry M. Denton to R. L. Shaw, dated September 10, 1903, for $27.76, with R. L. Shaw's endorsement.

Q. I show you seventeen checks, all purporting to be signed "Henry M. Denton," and all having upon their face the pencil memorandum "Attorney," for the respective dates and amounts: September 21, 1903, $62.90; September 29, 1903, $22.00; September 29, 1903, $15.00; October 1, 1903, $60.00; October 2, 1903, $227.40; September 23, 1903, $750.00; September 10, 1903, $175.00; September 9, 1903, $45.00; August 28, 1903, $500.00; August 21, 1903, $175.00; August 22, 1903, $30.00; August 8, 1903, $63.12; August 7, 1903, $25.00; August 6, 1903, $227.00; August 17, 1903, $400.00; August 8, 1903, $100.00; August 3, 1903, $208.00; and ask you in whose handwriting the signatures to those checks is? A. Henry M. Denton's signature.

The seventeen checks are offered in evidence by Mr. Lane, admitted without objection, and marked as one Exhibit, C-56, September 27, 1910, A to Q, inclusive.

Q. Now, I show you four checks, all bearing what purports to be the signature of Henry M. Denton, of the respective dates and amounts: July 6, 1903, $1,000.00; June 27, 1903, $1,000.00; June 20, 1903, $1,000.00; June 15, 1903, $1,000.00; and which bear no pencil memorandum upon them; and I ask you whether you made any investigation to find out what account those were paid out of?

THE VICE CHANCELLOR: Hadn't you better find out first whether they were ever

paid? They do not appear ever to have been punctured by the bank.

Q. Were they paid? A. They came to the Second National Bank through the Clearing House.

THE VICE CHANCELLOR: But he has not yet testified whether the Second National Bank ever paid those checks.

Q. Did the Second National Bank pay them? A. They were charged to my Trustee Account.

BY THE VICE CHANCELLOR:

Q. Those identical checks? A. Yes, sir.

Q. Or checks of those amounts? A. Those identical checks, I believe, sir, on August 4th.

Q. Will you please tell me how it is the New York Clearing House, then, received payment on the 15th of June and they did not get charged up against you until the 4th of August—on one they received payment on the 10th of June, on another on the 20th of June, on another on the 29th of June and on the other on the 8th of July—will you tell me why those checks were not charged up against anybody in that bank between the dates I have given you and the 4th of August? A. My recollection is that they were held in the cash until they were formally charged.

Q. And why do not they bear the three punch-holes that you have said heretofore indicated that a check had been paid? A. I don't know, sir.

Q. Where is there anything on those checks to show that the Second National Bank had ever paid them—paid those checks, that means? The endorsement will show that the New York Clearing House was paid on those checks, but where is there anything to show that the Second Nation-

al Bank paid those checks? A. I cannot give you that slip now, but I have no doubt I can find it.

Q. Why is it you are so clear that these particular checks were paid, when we have had numerous instances heretofore where checks drawn by Denton were not paid, but you drew a check against them and it took the place of these checks of Denton's? Why are you so clear about these checks, when there is nothing to back up your memory, that I can see, and nothing of record that does it? A. Only the entry there in the Dealers' Check List.

Q. What is the Dealers' Check List—what is that entry? A. On the 4th of August, 1903, that there were seven checks paid, four of $1,000 each, one of $400, one of $100, and one of $87.

Q. Charged to the account of W. Hogencamp, Trustee? A. No, sir, "Attorney," I guess it was Attorney Account.

Q. Well, now, which was it? A. Well, I don't know.

MR. LANE: Well, those checks were taken out of the bunch that you had of the Attorney Account,—that is all I know of it.

THE WITNESS: Yes, sir; there are the other three covering the same date (indicating).

THE VICE CHANCELLOR: Go ahead; I have nothing more to ask him.

MR. CAREY: I object to the witness using that book which is a compilation which he apparently has made from the Dealers' Check List and from the books of the bank, which are the best evidence.

THE VICE CHANCELLOR: I overrule that objection. If you want to examine the

sources from which he made up this thing that is in his hand, you may do so; I am not going to say that he cannot use this. All those books are here, and are absolutely subject to your inspection, and I am not going to say that he cannot use convenient memorandum which directs his attention to what he is to testify. If you want him to look in some regular book, it is entirely open to you to ask him to do it, but I am not going to say that he must get down on the floor and look at these twenty or thirty books that are here. The original sources are all here, and you can examine them.

MR. LANE: I offer those four checks in evidence.

MR. CAREY: I object to the checks being received, because it does not appear that they have ever been paid.

THE VICE CHANCELLOR: I shall sustain the objection. With the records of the bank right here, I do not see why we cannot have some good evidence that those identical checks were paid. If you have got a Dealers' Check List, or anything else, that will show that those four identical checks were paid, I shall admit them in evidence; but until you connect them directly I shall refuse to do it.

MR. LANE: I shall not press it any further, your Honor.

THE VICE CHANCELLOR: All right, he does not press the introduction of those checks.

MR. LANE: Well, I understand they are overruled. I do not withdraw the offer; I

think the testimony that they were paid is sufficient, unless it is shown that they were not paid.

THE VICE CHANCELLOR: You understand that my ruling is not that this witness may not testify from memory, if he has any memory about it, that the amounts of those checks got out of the Second National bank to the New York Clearing House, or however they paid it out; I do not rule that; but what I do rule is that the checks themselves have not been shown to be evidence because there is no evidence that those checks were ever paid.

Q. Were the amounts represented by those checks paid? A. Yes, sir.

Q. And paid out of what account? A. The Attorney Account.

BY THE VICE CHANCELLOR:

Q. "Wm. Hogencamp, Attorney"? A. Yes, sir.

Q. What time were they taken out of the Attorney Account—what date were the amounts taken out of the Attorney Account? A. August 4th, 1903.

BY MR. LANE:

Q. How can you explain that those checks bear date in June and July and were not charged to that account until August? A. My recollection is that they were counted in the cash items.

Q. Explain that—what do you mean by "counted in the cash items"? A. Well, that the Teller, whichever Teller it was—probably the Paying Teller—he has an item of sundry items, cash items, as part and parcel of his daily cash until they are formally taken up.

Q. Do you mean that these checks would be carried as so much cash, is that what you mean? A. Yes, sir; I think that is the fact.

Q. To make your books balance? A. Yes, sir.

MR. LANE: I ask that those four checks be marked for identification.

THE VICE CHANCELLOR: They may be. (Four checks are marked for identification, M. L., 2; M. L., 3; M. L., 4; and M. L., 5, respectively).

Q. Now I show you two checks, one dated May 1st, 1903, to the order of the Hudson Trust Company, for $270, purporting to be signed "Henry M. Denton," bearing on its face, in lead pencil, "Attorney Account," and another check dated June 30th, 1903, to the order of the Hudson Trust Company, for $1,635, signed "Henry M. Denton," and bearing on its face the word "Attorney", and ask you what those checks represent? A. Payments for Mr. Denton to the Hudson Trust Company.

Q. And were the moneys represented by those checks paid to the Hudson Trust Company? A. Yes, sir.

Q. And charged against what account? A. Attorney Account.

MR. LANE: I offer them in evidence.

BY MR. CAREY:

Q. In whose handwriting is the face of the checks, excepting the signature, so far as it is written? A. I do not know, sir, except the signature.

Q. What is there to indicate that those have been paid? A. They appear on the books of the bank as having been paid.

Q. What books? A. On the W. Hogencamp, Attorney Account.

BY THE VICE CHANCELLOR:

Q. Now, what you mean when you say that is this, is it not: that when you look in the Individual Ledger where the account "Wm. Hogencamp, Attorney," is contained, you find under a similar date to those checks a similar item? A. Yes, sir.

Q. But that does not prove that those identical pieces of paper were the ones that were cashed, does it? A. Not from the figures; no, sir.

Q. No, it may possibly be that in each instance where the bank has not punctured the check to show that it paid it, that you gave, yourself, a check against that account to take care of that item; may that not have been so? A. That might have been so, yes, sir.

BY MR. LANE:

Q. Which would have been used for what purpose,—your own check? A. As a voucher, with those checks probably attached to them.

Q. Have you been able to find the vouchers, or any vouchers, which were attached to those checks? A. No, sir.

Q. What do those checks bear upon their backs evidence of, so far as the Hudson Trust Company is concerned? A. The receipt by the Hudson Trust Company of that amount of funds.

Q. And those checks were never sent back by the Hudson Trust Company as unpaid, were they?

MR. CAREY: I object to the question as leading.

THE VICE CHANCELLOR: I overrule the objection. (To the witness). There is nothing in the book to show that?

THE WITNESS: No, sir.

The two checks are offered in evidence by Mr. Lane, admitted without objection, and are marked respectively, Exhibit C-57 and C-58, September 27, 1910. Exhibit C-57 is a check dated May 1, 1903, to the order of the Hudson Trust Company, signed by Denton, for $207. Exhibit C-58 is a check dated June 30, 1903, to the order of the Hudson Trust Company, for $1,635.00, and the witness's testimony is that each were taken out of the Attorney Account.

Q. I show you check dated January 25, 1902, to the order of H. Anderson, for $1173.88, signed "W. Hogencamp, Trustee," to which is attached a check dated January 25, 1902, to the order of Henry Anderson, for $1,173.98, signed "Henry M. Denton," and to which is attached a note for $1173.98, dated January 25, 1902, on demand, payable to the order of himself, signed "Henry M. Denton," and purporting to be endorsed "Henry M. Denton"—is that Mr. Denton's signature to the note and the endorsement of the note, and to the check of January 25th? A. Yes, sir.

Q. Just explain that transaction? A. I gave my trustee check for $1173.98 to take care of this Denton check for the same amount, represented by this note for the same amount.

Q. Was that paid and charged to the account? A. Yes, sir, paid and charged to my Trustee Account.

The two checks and the note are offered in evidence by Mr. Lane.

BY MR. CAREY:

Q. I notice both of these checks have the three-

hole punch-mark, indicating that they have both been paid,—is that right? A. I don't know, sir; I didn't look at it.

Q. You see them don't you (exhibiting the two checks to the witness)? A. Yes, sir.

Q. So, were both of those checks paid? A. Only the one, as I recollect it.

Q. Were both taken out of the Trustee Account? A. Only the one, as I recollect it.

Q. Do you have a recollection about it? A. Only by referring to the account.

Q. You do not recollect the incident itself at this time? A. The incident itself? No, sir.

The three papers are admitted, without objection, and are marked as one Exhibit C-59, September 27, 1910.

BY MR. LANE:

Q. I show you check dated January 30, 1902, "Pay to the order of Note H. M. D., $1252.29, W. Hogencamp, Trustee," to which is attached a note dated January 20, 1902, for $1250, on demand, purporting to be signed "Henry M. Denton", purporting to be endorsed by Henry M. Denton, and to which is attached another note for $1250, dated October 19, 1901, "Three months after date pay to the order of R. L. Shaw, $1250," purporting to be signed "Henry M. Denton", and purporting to be endorsed by R. L. Shaw, and ask you whether that is your signature, and that of "Henry M. Denton" and "R. L. Shaw" are their signatures? A. That is my signature, and that is Mr. Denton's signature and Mr. Denton's endorsement, and that is Mr. Denton's note with R. L. Shaw's endorsement.

Q. Now, what was that check used to pay? A. To pay that note.

Q. To what account was it charged? A. Trustee Account.

Q. And was it paid? A. Yes, sir.

MR. LANE: I offer the three papers in evidence, being one check and two promissory notes.

The three papers are admitted without objection, and are marked as one Exhibit, C-60, September 27, 1910. One is check by Wm. Hogencamp, Trustee, to the order of "Note, H. M. D.," for $1252.39, dated January 30, 1902; one of the notes is by Henry M. Denton to R. L. Shaw, dated October 19, 1901, at three months, for $1250, endorsed by Shaw and by Stroh & Huber; and the other note is by Denton to himself, for $1250, on demand, dated January 20, 1902.

Q. I show you check dated January 30, 1902, "Pay to the order of Note, H. M. D.," for $1850, signed "W. Hogencamp, Trustee, to which is attached a note dated January 2, 1902, for $1850, "Twenty seven days after date pay to the order of himself," for $1850, purporting to be signed "Henry M. Denton", and purporting to be endorsed "Henry M. Denton": I ask you if that check was paid, and to what account was it charged? A. It was paid, and charged into W. Hogencamp, Trustee Account.

Q. For what purpose? A. To take care of this note of H. M. Denton for $1850.

MR. LANE: I offer them in evidence.

The note and check are admitted without objection, and are marked as one Exhibit, C-61, September 27, 1910.

MR. LANE: I think that is all. I want to announce, if your Honor please, that a notice was served upon us by Mr. Carey to produce all of our checks in the Trustee Account, Attorney Account and Rent Account, and all of our check stubs and books that we might have, and I want to say that I have vouchers for every one of those items here and they can have them if they want them.

MR. CAREY: Every one of what items?

MR. LANE: In the Trustee Account and Rent Account. I have used some of them on the examination.

RE-CROSS EXAMINATION BY MR. CAREY:

Mr. Carey calls upon Mr. Lane to produce Exhibit C-45, and the same is produced.

Q. How do you say that the bank got the money for this cashier's check of January 27th, 1905, for $10,000, Exhibit C-45? A. That G. B. Wilson, or G. B. Wilson & Co., I don't know which it was—they got G. B. Wilson or G. B. Wilson & Co.'s check for $10,000.

Q. And you traced that through what book? A. The Individual Ledger, M. to Z.

THE VICE CHANCELLOR: The Dealers' Check List, M. to Z. under date of January 21, 1905. That is what he traced it through.

THE WITNESS: That was part of the transaction.

THE VICE CHANCELLOR: He asked you what books you traced it through, and I

am indicating one of the books you traced it through, I am positive of it.

THE WITNESS: Pardon me; my recollection is that I looked at the cashier's account and saw the debit of $10,000 and then looked at the cashier's account at the credit, and I traced it from the credit into the Dealers' Check List.

Q. You haven't those books for examination in court here today, have you? A. I think they are here.

THE VICE CHANCELLOR: I don't know what he means by that question. You have not gone through them today while you have been on the witness stand; you have not traced it through those books while you have been on the witness stand this morning?

THE WITNESS: A portion of it—

THE VICE CHANCELLOR: Oh, why don't you answer the question? I myself know perfectly well that you did not look at those books you have just testified about today on the witness stand—now, why don't you say you did not do it today, if you did not?

THE WITNESS: Well, then, I will say no, I did not do it today.

Q. When did you do it? A. Yesterday morning.

Q. What record is contained in the Dealers' Check List? A. Checks of dealers, paid.

BY THE VICE CHANCELLOR:

Q. By "dealers" you mean customers of the bank? A. Customers; yes, sir.

By Mr. Carey:

Q. And when is the entry made in the Dealers' Check List? A. The date of the transaction, or the next morning.

Q. On what date did the Cashier's Account get credit for $10,000? A. My recollection is that it was January 31st.

Q. Well, have you any recollection of the incident itself? A. Yes, sir.

Q. And you recollect that on the 31st of January, 1905, the Cashier's Account got credit?

The Vice Chancellor: He means, do you remember that right out of your own head, without looking at any book or anything else? Have you got a vivid recollection of that day, and everything that happened that day?

The Witness: Yes, sir.

Q. What else happened on that day, that you recall? Never mind the memorandum now.

The Vice Chancellor: He wants you to testify from your memory. What else happened? Are you sure you were in Jersey City that day?

The Witness: Yes, sir.

The Vice Chancellor: What time did you get here, is what he means; he wants to know all you remember about that day.

The Witness: January 31st?

The Vice Chancellor: 1905.

The Witness: I got here in the morning and went away in the afternoon.

Q. What time in the morning? A. I should say between nine and ten o'clock.

Q. And you came to the bank, did you? A. Yes, sir.

Q. Whom did you meet when you first went to the bank on that day? A. The clerks were all there, as far as I recollect.

Q. How many? A. I do not remember now how many there were; there must have been eight or ten.

Q. But you remember they were all there, do you? A. I think they were.

Q. Do you remember they were all there? A. No, sir.

Q. Well, why did you say you did, then? A. Because I thought I did.

Q. What time in the day did the Cashier's Account receive this credit for $10,000? A. It must have been before one o'clock.

Q. Do you remember it? A. Yes, sir.

Q. Well, what time was it, then? A. Before one o'clock.

Q. Well, eight o'clock in the morning? A. No, sir.

Q. How long before one? A. I could not give you the exact time.

Q. This check, Exhibit C-45, is dated January 27, 1905—what right had you to draw that against the Cashier's Account when Cashier's Account did not get credit until January 31, 1905? A. I had made the arrangement with Mr. Geo. B. Wilson to furnish the money.

Q. And so you drew against Cashier's Account in anticipation of getting the money from Mr. Wilson, did you? A. Actually, yes.

Q. And is that regular in banking business? A. Yes, sir.

Q. Is it? A. It is customary.

Q. Is it proper? A. Yes, sir.

Q. Suppose you hadn't got it? A. Well, Mr. Wilson had the money there to his credit; his bank account was good for it, and he said I could have it.

Q. And so, on the faith of his saying that you might have it, you drew against it? A. Yes, sir.

Q. By the stamp on the back of this it appears to have been paid on the same day, so it was paid out of Cashier's Account before Cashier's Account was actually credited, was it not? A. It was paid on the same day?

Q. It appears on the back of it. A. Let me see it. (The check is handed to the witness by Mr. Carey). No, sir; it was not paid the same day.

Q. When was it paid? A. The following day, I should say, if it was not a holiday or a Sunday.

Q. Well, why do you say it was not paid the same day? A. Because it went through the New York Clearing House, and we wouldn't get it until the next day.

Q. You would get it at what time the next day? A. Well, provided it came in the next day we would get it—the time varied, it might be twelve o'clock, or it might be one o'clock.

Q. Well, in the regular course of business it would come in on the 28th of January? A. If the 28th of January was not a Sunday or a holiday,—the next business day.

Q. In your dealings with the bank were you accustomed to draw against accounts before the accounts were good for your drafts? A. It was done at times.

Q. You say that this account which you made up by yourself, as the result of which you credited Mr. Denton with seven thousand and odd dollars on his thirteen thousand dollar note, was never shown to Denton? A. Not to my recollection.

Q. And never reported to him? A. I do not recollect about that.

Q. And you are unable now to find any items which composed that account? A. I haven't found it yet.

Q. When did you first look for them? A. The items?

Q. Yes. A. About the time that entry was made—or, when did I first look for those items?

Q. Yes. A. Oh, I have looked for them off and on for weeks.

Q. Did you make that endorsement on that note at the time it bears date? A. Yes, sir.

Q. What else did you do on that date? A. Ate my breakfast, I presume.

Q. Is that all? A. Probably got my lunch.

Q. Is that all? A. And my dinner.

Q. Is that all? A. No.

Q. As a matter of fact, wasn't that a pretty busy day with you, Mr. Hogencamp? A. I do not recollect now, sir.

Q. You do not recollect anything about it? A. No, sir.

Q. You do not recollect that on that day you paid out thirty-eight thousand, eight hundred and two dollars and some cents to the bank? A. If the record shows that is the date, why I did it, but I don't recollect it now.

Q. And weren't you putting through transac-

tions in connection with the sale of your stock on that day? A. Yes, sir; I think I was.

Q. And in connection with that transaction you made this endorsement on the note? A. That is my present recollection; yes, sir.

Q. You referred in your direct examination to an entry under Bills Discounted, under date of March 24, 1906, $35,000,—do you know in whose handwriting that entry is? A. I do not.

Q. You referred also to an entry in Suspended Debt Account under the same date,—do you know in whose handwriting that entry is? A. I do not.

Q. Are the entries in the same handwriting? A. I don't know about that. I will have to look about that. It is in this other ledger, I think (referring to General Ledger, No. 8, which the witness now examines). The entry of "Suspended Debt" and the entry of "Bills Discounted" in Suspended Debt Account seem to be in the same handwriting.

Q. They are not in your handwriting? A. No, sir. The dates "March 24th," and "24th" look to me to be different, I don't know whether they are, or not. But the "Bills Discounted" and "Suspended Debt" are in the same handwriting, but they are not in mine.

Q. You were not present when those entries were made? A. Not to my recollection, no, sir. I do not think I was; in fact, I am sure I was not.

Q. How long prior to that time had you given that thirty-five thousand dollar note to the bank? A. I do not recollect that, sir.

Q. Did you get credit on that day for $35,000? A. No, sir.

Q. Nowheres? A. No, sir.

Q. Now, you find nothing in the Discount Regis-

ter which shows any bills discounted on that day? A. No, sir.

Q. Referring to Exhibit C-47 (which is now produced by Mr. Lane and exhibited to the witness by Mr. Carey); do you know what that check went to pay, aside from the note to which it was attached? A. The paper says "Stroh & Huber note" on the face of it.

Q. What is that? A. It says on the face of it "Stroh & Huber note."

Q. What about the Stroh & Huber note? A. Well; it was a note held by Stroh & Huber.

Q. Wasn't it a note given to Stroh & Huber? A. I imagine it was from this. It was Denton's note to R. L. Shaw, endorsed "Stroh & Huber".

Q. Who were Stroh & Huber? A. They were builders or contractors of some sort.

Q. Were they working on any property in which Mr. Denton was interested? A. Yes, sir.

Q. Where? A. Well I get those things mixed up; I don't know. I think it was 149th Street, but I won't be sure; I couldn't say.

Q. And at this time, February 10th, 1902, did you have any interest in that property? A. No, sir.

Q. Did you, for the Bank, have any interest in the property? A. No; excepting interest in Mr. Denton.

Q. The Bank had advanced some money, in connection with that property? A. They had advanced money to Mr. Denton.

Q. Through you? A. Through me?

Q. Yes. A. No, sir; well, the Bank did it, I did not do it personally.

Q. You were the person who acted in the mat-

ter with Mr. Denton, were you not? A. I presume so.

Mr. Carey calls upon Mr. Lane for the production of Exhibit C-48, and the same is produced and exhibited to the witness by Mr. Carey.

Q. C-48 is a transaction of the same character as C-47, and involves the same persons, does it not? A. Yes, sir.

Q. And Stroh & Huber, were they contractors on the 149th Street property? A. Well; I don't know which particular property it was on; I know they were contractors.

Q. On some property? A. On some property.

Q. In which Mr. Denton was interested? A. Yes, sir.

Q. And in connection with which the Bank, through you, had been advancing money? A. Yes, sir.

Q. And this C-48 was in payment of some obligation owed to Stroh & Huber in connection with construction work on some building of Mr. Denton's? A. This is my recollection of it.

Mr. Carey calls upon Mr. Lane for the production of Exhibit C-49, and the same is produced and exhibited to the witness by Mr. Carey.

Q. C-49 reads "H. M. D., Int."—what interest was that? A. The check attached to it will tell.

Q. Well, the check attached to it reads "to the order of the Emigrant Industrial Savings Bank". A. My recollection is it was interest on a mortgage that the Emigrant Industrial Savings Bank held on some of Denton's property.

Q. And was there a mortgage at the same time

in your name upon this same property? A. I do not recollect, sir.

Q. You wouldn't say that there was not, would you? A. I have no recollection at present.

Q. Wasn't this upon the 48th Street property? A. Possibly; I do not remember what property it was on. I am satisfied that Mr. Denton would not give his check to the Emigrant Industrial Savings Bank unless he owed the money to it.

Q. Now; in all of these instances where interest was paid on encumbrances upon property in which Mr. Denton was interested in New York, upon which encumbrances interest was paid through your Trustee Account, or Attorney Account, was there not a mortgage standing in your name upon the same property at the time such payment was made? A. I would say I don't recollect now.

Q. Was there not, some time between 1901 and 1905, a mortgage standing in your name upon every piece of property in which Mr. Denton was or had been interested in the City of New York during that period? A. I do not remember now, sir. The records will show.

Q. Were there not a large number of mortgages given in your name and for your benefit, or the benefit of the Bank, upon property in which Mr. Denton was interested in New York City, between 1901 and 1905? A. I do not remember now, sir.

Q. Don't you remember any such instances? A. If there were, they were matters of record, which ought to show.

Q. Do you recall any such instances now, yourself? A. I do not remember now, sir.

Q. Not a single instance in which a mortgage

was given to you on property in which Mr. Denton was interested between 1901 and 1905? A. There was a mortgage given for $7,500, as I recollect it, in connection with that guaranty or money that was obtained on the stock for McKelvey. That is the only $7,500 mortgage that I recollect now. I think it was $7,500, I won't be sure.

Q. Whenever a mortgage was taken and turned over to the Bank, wasn't the mortgage taken in your name? A. I do not recollect, sir. Well; naturally it would be. I don't know as the Bank would take it direct. It might have been put in my name, and it might not.

Q. Do you know of a mortgage being put in any other person's name upon this New York property which reached the Bank for the Bank's benefit? A. I do not recollect it now, sir.

Q. And were not all of these payments of interest which you have testified to made in order to protect the mortgages held either by yourself or by the Bank upon the property, upon encumbrances resting upon which such interest was paid? A. No; I cannot put it that way, because I say I do not recollect about the mortgages.

Q. This Exhibit C-49 bears date January 30, 1902. At that time weren't you, or the Bank, through you, advancing large sums of money for the purpose of completing the buildings in New York City in which Mr. Denton was interested? A. The Bank advanced money. As a matter of recollection now, I don't know what they advanced.

Q. And was it not arranged between you and Mr. Denton that money should be advanced through you upon Mr. Denton's checks, which checks should be paid by checks drawn by you? A. No; I can't say that.

Q. And will you tell us how you came to draw your check, which is Exhibit C-49 (exhibiting the same to the witness), as you say, to pay the check of Mr. Denton annexed thereto for a like amount?

THE VICE CHANCELLOR: How did you come to draw that check, is what you are asked.

A. I do not recollect now.

Q. Well; you have testified to a large number of checks? A. Yes.

Q. Of your own checks, drawn in the same way? A. Yes.

Q. To pay checks, attached thereto, of Mr. Denton's? A. Yes, sir.

Q. Now, what was the reason that you did that? A. I don't know just now what the reason was. I could have charged that account for that check right square up; for some reason or other my own check was made out for it for the same amount, and Denton's check attached to it, showing the transaction. That is the only reason I can give for it.

Q. You say you could have charged up Denton's direct? A. Yes.

Q. If you had charged up Denton's check, to what account would you have charged it? A. W. Hogencamp, Trustee.

Q. Why? A. It is the only account that Mr. Denton had ony funds in. Mr. Denton had no personal account at that time.

Q. At what time? A. At the date of this check here, January 30, 1902, he had no funds there to his personal account.

Q. You are sure about that, are you? A.

Yes, sir; that is my recollection of it. He may have had, but I have no recollection of it.

Q. You testified a minute ago positively that he had none there? A. Yes, sir; but I say to the best of my knowledge.

THE VICE CHANCELLOR: Let us find out. Your explanation is that the reason you charged it to the Trustee Account is because he had no personal account at that time; now, if you find you are mistaken you may say what your reason was.

Q. Is the book I show you Mr. Denton's pass book in the Second National Bank? A. I believe it is, sir.

Q. And did he have an account, a personal account, in 1902? A. Yes.

BY THE VICE CHANCELLOR:

Q. Then you are mistaken? A. I was mistaken.

Q. Then answer Mr. Carey's question, which was, why, if you got a check on the Second National Bank, signed by Henry M. Denton, should you charge it to any other account than the personal account which Mr. Denton had in the Bank at that time? A. I don't know from this thing here (referring to the Denton pass book) whether he had any balance at that time; he had an account, but whether he had a balance to his credit, or not, I don't know. Evidently this was in connection with the Trustee business.

BY MR. CAREY:

Q. Well, what was the "Trustee business"? A. Receiving moneys of Mr. Denton and paying them out for Mr. Denton's benefit.

Q. And receiving what moneys for Mr. Den-

ton's benefit? A. Whatever he turned in there in the way of deposits or loans.

Q. Why did you have an account of that kind, instead of doing all that through Mr. Denton's personal account? A. I wanted to have the control of the payments.

Q. As a matter of fact, weren't you getting all of the proceeds of Mr. Denton's property in New York at that time, as far as you know? A. At that time?

Q. At the time C-49 is dated? A. I do not recollect the date.

By the Vice Chancellor:

Q. At the time you were keeping the Trustee Account is what he wants to know, Mr. Hogencamp, was not the understanding between you and Denton that all of the proceeds of the real estate operations that he was engaged in in New York should go to you? A. Yes, sir.

By Mr. Carey:

Q. When did that understanding originate—when did it begin? A. About the time the account was opened.

Q. About the time the Trustee Account was opened? A. The Trustee Account, or the Rent Account. I think it started in 1901. That is my recollection of it.

Q. And from that time on down to 1905, when all the properties in which Mr. Denton had been interested in New York had been sold, that same thing continued, did it not? A. That I received all the proceeds?

Q. Yes. A. No, sir.

Q. When was there a break in that procedure? A. I cannot give you the date.

Q. Well; about what time? A. I do not recollect that, sir.

Q. Was it in 1902? A. I do not recollect.

Q. 1903? A. I have no recollection of the date at all.

THE VICE CHANCELLOR: Now, there is no use in going over a whole lot of dates, if he says he does not recollect, Mr. Carey.

Q. Will you state what took place between you and Mr. Denton when the arrangement was made that the proceeds of his New York property should all be turned over to you, at about the time the Trustee Account was opened? A. I wanted the funds put in there so that I could control the payments of it.

Q. State what you said to Mr. Denton, and what Mr. Denton said to you? A. It is impossible to give that conversation now.

Q. Well, give it, in substance? A. I have given it to you in substance—that I wanted the deposits made there so that I could control them.

Q. And you wanted them in an account that you could control? A. There was lots of checks that he drew that I O.K'd.——

Q. (Question repeated.) A. Yes, sir.

Q. And from which no withdrawals could be made without your O.K.? A. Yes, sir.

Q. Now; what occurred between yon and Denton at the time when that condition of affairs changed? A. I don't know that they did change much.

BY THE VICE CHANCELLOR:

Q. You said it did. Now, Mr. Hogencamp. Mr. Carey just asked you whether that under-

standing, once arrived at, continued all down to the end, and you said "no". A. Yes, sir.

Q. Now, he wants to know what happened at the time that it ceased to continue. A. Well; I wanted to explain that.

Q. Go on; that is what he has asked you. What happened at that time? A. At that time, why, Mr. O'Callaghan kindly informed me that he had kept some of the moneys and did not turn it over to me.

Q. Now, with the exception of that—with the exception of the money which Mr. O'Callaghan told you that he had retained and not paid over to you—so far as you know, did the understanding between yon and Mr. Denton continue to be carried out down to the time in 1905 when the last of his properties in New York were sold? A. I think so; yes, sir.

BY MR. CAREY:

Q. Then there was never any new arrangement between Mr. Denton and you with respect to the payment of these moneys over to you? A. No, sir.

Q. Now; when did Mr. O'Callaghan make this confession to you? A. Well, it was last week, one day, in this court room here.

Q. Oh; that was the first you knew about it; was it? A. Yes, sir.

Q. And up to that time you had supposed that from 1901 down to the time of the closing out of the New York property you had received all of the proceeds of the property? A. I may have known it at the time, but I have no recollection of it now; it had gone out of my memory until Mr. O'Callaghan jogged my memory on it here last week one day.

Q. Then at the time you made these various payments, to which you have testified this morning, you knew that the moneys paid went into the Denton properties in New York, didn't you? A. Yes, sir; I think I did, with the exception of some outside matters.

Q. And what outside matters do you refer to? A. Well; there may have been some money that was given to him individually, that we got his check for; I don't know what he did with that money, whether it went into the properties or whether it did not. Some of his checks that he drew I O.K'd. Whether I knew it at the time I don't know; I presume I did. I don't know whether I did or not.

Q. But such sums as that were comparatively small sums, weren't they? A. Well; I don't know.

Q. Well; what do you remember about it? A. Well; those checks that were put in evidence there, quite a number of them were given to Mr. Denton, and I do not recollect now the amounts, you have them there.

Q. Well; suppose we look at them. (Exhibits C-50 to C-61 inclusive, called for by Mr. Carey and produced by Mr. Lane.) C-50 appears to have been for painting, according to the notation on the check? A. Yes, sir.

Q. This person to whom Mr. Denton drew his check was a painter? A. Yes, sir; that is my understanding.

Q. And you understood at that time that that went into some of Denton's property in New York? A. Yes, sir.

Q. Now, the checks in Exhibit C-51, drawn by Mr. Denton, did you understand that those went

into the buildings, also—into some of the buildings? A. (Examining the checks contained in the Exhibit indicated.) There is nothing in these checks to indicate where they went to, except that the checks were drawn to Mr. Denton and paid to Mr. Denton.

Q. You do not mean to have us understand, do you, that you would pay the sums represented by these checks to Mr. Denton at that time without knowing that the moneys were to go into the Denton buildings in New York? A. I have no recollection now what they were for. I probably knew it at the time.

Q. And you probably knew at the time that these sums went into the buildings in New York, did you not? A. Well; either into the buildings in New York, or went for some purpose that I was satisfied should be paid.

Q. Paid out of the Trustee Account? A. Yes, sir.

Q. And for some purpose which you thought would not be detrimental to the interests of the Bank? A. Yes, sir.

Q. In other words, that you thought would be for the benefit of the Bank? A. Well; I imagine so at that time; I have no recollection of it now.

Q. Now; the checks in Exhibit C-52—is the same true of those (exhibiting the checks indicated to the witness.) A. There is one here that I do not thing that the Bank was interested in—that check of $275.

Q. You refer to C-52*e*? A. C-52*e*; I do not remember now that that was connected with the property; and yet it may have been.

Q. You do not remember that it was not, do you? A. Well; from the fact that it was paid to

the order of F. B. Brill, who is a storekeeper over here in Jersey City, I don't know what he would have to do with the property.

Q. Mr. Brill kept a hardware store, didn't he? A. Yes, sir.

Q. And didn't he use hardware in the buildings in New York? A. I don't know who Mr. Denton bought his hardware of.

Q. Didn't he use hardware in the buildings in New York? A. I didn't use anything, sir.

Q. Was not hardware used in the buildings in New York? A. I understand every building has hardware.

Q. Don't you know that Mr. Denton bought hardware of Mr. Brill for use in the New York properties? A. I do not recollect it now, sir.

Q. Didn't you direct Mr. Denton to go to Mr. Brill and buy hardware of him? A. No, sir.

Q. You know Mr. Brill, don't you? A. Yes, sir.

Q. Did you deal with him yourself? A. Personally?

Q. Yes. A. I might have bought a knife of him at some time or other.

Q. Did not you go with Mr. Denton to Mr. Brill, and direct Mr. Brill to honor Mr. Denton's orders? A. I do not recollect that now, sir; I won't deny it, but I say I have no recollection of it.

Q. Look at Exhibit C-56, A to Q, and state whether or not you are satisfied that the money represented by those checks went into the New York properties. (Handing the exhibit to the witness.) A. (Referring to C-56, B.) L. W. Romaine I have no recollection of; I do not recollect any such a man. Here is one to W. McCrain & Co. for $15 (Referring to C-56, C),

I do not recollect that, I do not remember that name. Here is C-56, D-, $60., to Charles Conant, I do not recollect that party——

BY THE VICE CHANCELLOR:

Q. That is not the question he asked you. (Question repeated.) Thost are checks that were drawn by Denton, and when they reached the Bank you pencilled the word "Attorney" upon them and had them paid out of that account kept in the Bank under the name of Wm. Hogencamp, Attorney? A. Yes, sir.

Q. And Mr. Carey wants to know whether you are not convinced that you only permitted them to be paid out of that account because you believed, at least, that those things went into the New York building? A. I think that is very likely so, sir.

Q. Now; let me ask you with respect to those four checks for $1,000 each which were offered for identification, marked M.L., 1, 2, 3 and 4, which you say were taken out of the Attorney Account on the 4th of August, 1903. What is your memory as to the purpose for which that $4,000 was to be paid? A. Stohr & Huber were contractors of some sort or other, and it was for payment to those contractors.

BY MR. CAREY:

Q. Look at C-57 and C-58, and state whether or not the money represented by those checks went for the benefit of the New York properties? A. They did not.

Q. For what were those checks used? A. Paid to the Hudson Trust Company for payment on account of a loan, one of them; and the other was for interest, I should imagine.

Q. You should imagine? A. Well; I am satis-

fied of it. I think I recollect something of the transaction.

Q. None of these checks bore in pencil the word "Attorney Account" at the time Mr. Denton signed them, did they? A. I think not.

Q. Those were all put on afterwards? A. Put on when they came in for payment.

Q. Were any of these checks, at the time when they were in Mr. Denton's possession, marked with the word "Trustee" or "Attorney"? A. That one hundred and forty odd dollars was marked at the time, I think (referring to one of the checks in the exhibits shown him). The rest of them, the endorsement was put on afterwards. That is my recollection of it.

Q. The one for $140 was what? A. That was a transaction right in the bank; it did not go out.

Q. That is Exhibit C-54 (exhibiting the same to the witness)? A. Yes, C-54. That check did not go out of the bank. That was a bank entry inside, it did not go out to any individual.

Q. Do you know who "H. Anderson" was? A. I think he was an architect.

Q. On the 149th Street property? A. I am mixed up on the properties, but I am sure that Mr. Anderson was an architect.

Q. He was an architect on some of Mr. Denton's properties in New York? A. That is my recollection, yes, sir.

Q. And that is the reason why you authorized payments to him? A. Yes, sir.

Q. A number of notes have been offered in evidence here this morning in connection with checks —were not all those notes made by Mr. Denton under your direction? A. No, sir.

Q. Did not Mr. Denton consult with you before

he made any of his notes which have been offered in evidence this morning? A. I do not recollect now, sir.

Q. And didn't he make those notes, as far as he made them, because money was needed in connection with the construction work in New York? A. I don't recollect now why it was done.

Q. You have no recollection with respect to why any one of those notes was made? A. No, sir; I have not now.

Q. You were the one who knew that money was needed in any one of these accounts, weren't you? A. I guess he told me when money was needed.

Q. How did Mr. Denton know? He did not keep the accounts. A. He knew what payments he had to make.

BY THE VICE CHANCELLOR:

Q. Yes, but what Mr. Carey says is that he may not have known how much money you had in the bank to pay them with. A. Yes, he knew that.

Q. He kept it all in his head, and kenw better than you who kept it in books, did he? A. Well, he was in the bank there pretty much every day, talking over the matter.

MR. CAREY: I would like to ask a question which is not directly re-cross examination.

THE VICE CHANCELLOR: Ask it.

BY MR. CAREY:

Q. You tsstified at a recent hearing to the receipt by you of $7,584.79, on the 30th day of January, 1902, and stated that that represented the payment to you of a mortgage which you held upon the property mentioned in your testimony: Was not that payment a cash payment to you on

the closing of the title to the property known as the Ury Baker property? A. I don't know what it was on; I don't recollect now.

Q. Well, wasn't it the cash proceeds of sale, instead of the payment of a mortgage which you held? A. All I recollect about it now is the memorandum which refreshed my mind from the books, and that was that it was a erceipt, and it says under the head of "Receipts" "7584.79", and it said "Mortgage".

Q. What book was that? A. I think it is on the ledger.

Q. My recollection is that there was no entry on the ledger. A. Is it? Well, there is an entry somewheres or another. I got it from somewheres.

Q. Mr. Hogencamp, you recollect the sale of what was known as the Ury Baker property, don't you? A. No, sir.

Q. You don't recollect that? A. No, sir.

Q. You remember the property on which the so-called Rose judgment was a lien, don't you? A. I do not, now.

Q. You testified that the Rose judgment was paid to you January 30th, 1902, and that this other payment of $7,584.79 was also made to you on January 30th, 1902: They were with respect to the same property, were they not? A. I do not recollect, sir, what the property was. I know that I got one item of $3,539.54 and another of $7.584.79 on the 30th of January, 1902.

THE VICE CHANCELLOR: If you will look in the Individual Ledger, No. 17, page 688, you will see whether there was anything there about that word "Mortgage," that he thought was there. It is the Trustee account, and that will tell you whether there

is any notation there as to anything about a mortgage.

THE WITNESS: (After examining the account on the page indicated) I find the two items there, but there is no memorandum.

Q. Where did you get the idea that that $7,584.79 was a payment of a mortgage held by you? A. In thinking that thing over I don't know now where I did get that idea from.

Q. Was it because evidence had been introduced to the effect that you held a $7,500 mortgage upon some of Denton's property? A. No, sir; I do not think that was the case.

Q. Well, what is your recollection now, if you have any, with respect to what that item $7,584.79 was paid to you for? A. It was paid to me for moneys coming from Denton.

BY THE VICE CHANCELLOR:

Q. Coming from Denton? A. Moneys that Denton was entitled to, either from the sale of the property, probably, or a foreclosure, I don't know which. These things have gone out of my head.

MR. CAREY:

Q. Let us see if I cannot help you out about that a little: Do you remember the sale of a property for $2,800, the title to which was closed January 30, 1902, on Lenox Avenue, in New York City? A. Mr. Carey, I cannot remember the details of these transactions.

Q. Well, do you remember any such transaction as that? A. We had business and business transactions for Mr. Denton, for his account, and I cannot keep a recollection of it; the records ought to show.

Q. The records do not show, do they? A. Well, they will show over in New York; what I mean to say is they will show over in New York.

Q. But your records do not show? A. No, sir.

Q. Mr. Hogencamp, did you produce to-day a letter written to you by Thomas O'Callaghan under date of August 27, 1901, with reference to the assignment of a mortgage to you, which mortgage was made by Redfield to Robert L. Shaw for $24,000? A. No, sir.

Q. Did you look for it? A. I did.

Q. And have not been able to find it? A. I have not. Was that letter to me?

MR. O'CALLAGHAN: Yes.

THE WITNESS: What was the date of it?

MR. O'CALLAGHAN: August 27th, 1901.

Q. I show you what purports to be a copy of such a letter (exhibiting to the witness a copy of a letter contained in a letter press copy book) and ask you to look at that copy, and see if that refreshes your recollection as to the receipt of such a letter? A. After examining the copy of the letter.) I do not recollect that now, sir.

Q. Do you say that you did not receive such a letter as that? A. I have no recollection of receiving such a letter, and yet I may have received it. I have no recollection of it.

THE VICE CHANCELLOR: Just let me ask, Mr. Carey. Do you contend that this is a different mortgage from the one that he acknowledges that he received on behalf of the Bank, for $24,000, and is in the books here?

MR. CAREY: Yes, sir, entirely different.

THE VICE CHANCELLOR: All right; I just

wanted to know, because if it is the same, there is no use wasting time on it; but if it is a different one, from your standpoint, it is not a waste of time. Proceed.

Q. Did you produce to-day a letter dated October 16, 1901, from Thomas O'Callaghan to you, relative to an assignment of the Shaw mortgage? A. No, sir.

Q. I show you what purports to be a copy of such a letter (exhibiting to the witness a copy of a letter in a letter-press copy book) and ask you to read it and see if that refreshes your recollection? A. I have no recollection of it, sir.

Q. Did you look for such a letter as that? A. Yes, sir.

Q. And did not find it? A. Didn't find it.

Q. Do you say that you did not receive such a letter? A. I do not say so, no, sir; I say I have no recollection of ever receiving any such a letter.

Recess until two o'clock, P. M.

Hearing of the cause resumed at two o'clock, P. M.

WILLIAM HOGENKAMP, recalled.

BY MR. CAREY:

Q. Did you produce a bill rendered to you by Mr. O'Callaghan for $53.88, balance due? A. No, sir.

Q. Did you look for it? A. I did.

Q. Were you able to find it? A. I haven't found it as yet, no, sir.

Q. Do you remember receiving such a bill? A. I think I do; I think I remember receiving a bill, but I do not recollect now what it was, the amount of it, nor anything else. I think I received a bill.

Q. Do you know what it was for? A. No, I do not; I don't recollect.

Q. I show you what purports to be a copy of a bill, and ask you, after looking at that, if you remember receiving a bill of that character (showing the witness a copy of a bill in a letter-press copy book)? A. I do not remember receiving any bill of that character; no, sir. I may have had it, I don't say that I did not, but I have no recollection of it now.

Q. Do you remember receiving three mortgages, Redfield to Hogencamp, which were recorded for you by Mr. O'Callaghan? A. I do not.

Q. Do you remember receiving a mortgage, Redfield to Shaw, which was recorded in four different sections in New York City by Mr. O'Callaghan for you? A. I do not.

Q. Do you remember receiving an assignment of such a mortgage from O'Callaghan to you? A. I do not.

Q. Did you produce a letter dated September 28, 1901, from Mr. O'Callaghan, relative to the payment of this bill of $53.88? A. I have no recollection of it, sir.

Q. Will you look at this copy of the letter, and say if that refreshes your memory (showing witness copy of letter in letter-press copy book)? A. It does not.

Q. I show you this check. Exhibit 11, N,—is that the check which paid this bill, a copy of which I have shown you? A. I don't know, sir; it is a check I gave Mr. O'Callaghan for $53.88; what it was for I haven't any present recollection of.

Q. You notice that is the same amount as the copy of the bill I have shown you? A. It seems to be; yes, sir.

THE VICE CHANCELLOR: Do not say "it seems to be"—it is.

THE WITNESS: It is, yes, sir, for the same amount.

Q. Did you produce Mr. Denton's cash book which he delivered to you? A. What do you mean by his "Cash Book"?

Q. Showing the moneys collected for rents, and things of that character, and turned over to you? A. I don't know of any such book as "Mr. Denton's Cash Book".

Q. Did you produce any books of Mr. Denton's to-day? A. There are some books here of Mr. Denton's.

Q. What are they? A. In connection with deposits in the Second National Bank, as I recollect.

Q. What do you say? A. They are for deposits in the Second National Bank of Jersey City, as I recollect it.

Q. Did you produce Mr. Denton's check book, or stub check book? A. I did not produce it. I think it is here.

Q. Is that a check which Mr. Denton had delivered to you before this time? A. If that is the book.

THE VICE CHANCELLOR: The book he has in mind is the book that Mr. Denton delivered to him; that is what he means to say.

THE WITNESS: Yes, sir.

Q. Where did he deliver these to you? A. My recollection is, it was down to Deal Beach; I am not positive.

THE VICE CHANCELLOR: We have been over that before. You asked him the same question, or Mr. Vredenburgh or Mr. Lane did, and he has made the same answer as before.

Q. Now, have you produced these checks and stubs which Mr. Denton delivered to you at Deal? A. Yes, sir; I have them here.

Q. And all the papers which he delivered to you there for the purpose of making up an account between you and him? A. As far as I know; yes, sir.

Q. Did you produce an assignment of a mortgage for $24,000.

THE VICE CHANCELLOR: Why say "produced"? I would suggest that that is a word which may mislead. What I think you had better ask is whether he has brought to Court these things; because the word "produced", when you speak with respect to a trial means that the thing is actually produced in the trial, and he does not pretend

to have produced these things in the trial. I think you had better use the phrase "Has there been brought to Court, &c."

Q. Has there, to your knowledge, been brought to Court an assignment of a mortgage for $24,000, the mortgage being from Redfield to Shaw, and the assignment of that mortgage being to you? A. No, sir.

By the Vice Chancellor:

Q. My recollection of your testimony concerning that is that you have no present recollection of ever having received any such mortgage—is that correct? A. Yes, sir; that is my present recollection.

By Mr. Carey:

Q. Do you still have no recollection of the assignment after reading Mr. O'Callaghan'e letter to you of August 15th or 16th, 1901? A. I have no present recollection; no, sir.

Q. And that does not refresh your recollection at all in regard to the matter? A. It does not.

Q. Has there, to your knowledge, been brought to Court a mortgage for $7500, made by Redfield to you, bearing date about August 12th or 15th, 1901, covering property in New York City? A. No, sir.

Q. Has there, to your knowledge, been brought to Court a mortgage for $5,000, dated in August, 1901, from Redfield to you, and covering property on Columbus Avenue in New York City—127th Street near Columbus Avenue, New York City? A. No, sir.

Q. Did you look for such an instrument? A. I have.

Q. And have been unable to find it? A. I have not been able to find it.

Q. Do you recollect receiving such a mortgage as that? A. No, sir.

Q. Do you recall receiving payment of a mortgage for $7500, covering property located on the corner of 119th Street and 7th Avenue, New York City, in which Mr. Denton was interested? A. Not specially, no, sir.

Q. Well, did you at all? A. Not in connection with that location.

Q. Do you recall a woman by the name of Burgess, who bought the property on 119th Street and 7th Avenue, and which belonged to Mr. Denton? A. No, sir.

Q. You have no recollection of that transaction at all? A. No, sir.

Q. You have testified to-day to a number of checks of Mr. Denton's, and checks of corresponding amounts of yours, and you say your checks went to pay the checks drawn by Mr. Denton. Now, when did you find those checks——both yours and Mr. Denton's? A. I couldn't tell you how long ago.

Q. Where did you find them? A. With my vouchers.

Q. Where? A. I do not recollect now whether it was down at Deal, or up in Paterson, or where.

Q. Or at the Bank? A. They couldn't be at the Bank, naturally; and yet it may have been; I don't recollect where it was.

Q. And did you find the Denton checks in the same place as you found your checks? A. Yes, sir.

Q. And when you found them how were they

with respect to each other? A. Well, the most of them were right consecutive, loose.

Q. Not fastened together in any way? A. Some were and some were not.

Q. (Referring to checks shown to the witness during the morning session, which are now produced by Mr. Lane at Mr. Carey's call, and are handed to the witness.) Now, Mr. Hogencamp, you have testified that these checks I show you were paid out of the Trustee Account. Will you please turn to the Trustee Account in the books of the Bank, and see where those checks were charged up, "those checks" being Exhibits C-36, C-37, C-47, C-48, C-49, C-50, C-51, C-52, C-53, C-59, C-60 and C-61? A. (Referring to Individual Ledger No. 17, page 688, to the account of Wm. Hogencamp, Trustee.) C-61 is part of an item under the head of "Debits," "W. Hogencamp, Trustee, Jan. 30, 1902, $4,002.39."

Q. What others make up that item? A. C-60, $1,252.39, and C-37, $900. C-36 and C-37 go together.

By Mr. Lane:

Q. Go together, representing the same amount, I suppose? A. Yes, sir. C-59, W, Hogencamp, Trustee, check for $1173.98, appears on the Debits here under the same date of January 30, 1902, $1173.98.

By Mr. Carey:

Q. All right; take up another one. A. C-53, check of Henry M. Denton for $1700, is charged to my Trustee Account under the head of March 31, 1902, $1700.

Q. Take the next one. A. April 26, 1902, is a check of my Trustee Account for $700, to the

order of Henry M. Denton and endorsed by him; there is the check for $700, dated April 26, Exhibit C-52A, and it appears charged to my Trustee Account, April 26, $700. C-52B for $150, dated August 6, 1902, is charged against my Trustee Account, August 6, 1902, $150. C-52C, my Trustee check for $600, and another Trustee check for $375, making $975, Exhibit C-52D, are charged against the Trustee Account, March 15, $975. C-52E, my Trustee check for $275, is charged against my Trustee Account the same day, $275. C-52F, dated April 12, for $400, is charged into the Trustee Account, April 12, $400. The three following items, Exhibits C-52G, for $450, C-52H, for $200, and C-52I, for $130, making $780, is charged against my Trustee Account, April 12, $780. C-51E, check of Henry M. Denton, is charged to my Trustee Account, $263.47, June 20, the same amount, $263.47. C-51D, check of Henry M. Denton, is charged against the Trustee Account on the same date, $165. C-51C, the check of Henry M. Denton for $350, April 22d, I do not see any direct charge of that here. That may have been charged with something else.

By Mr. Lane:

Q. Have you a memorandum that you made up that you can tell by reference to? A. No, sir. On April 24th, in the Individual Ledger, in the Wm. Hogencamp Trustee Account, there is an item charged against the account of $2976.90, and this check is part of that; what makes up the others I cannot tell, because all the checks are not before me.

By Mr. Carey:

Q. Go on. Exhibit C-51B, check of Henry M. Denton, for $1062, was charged to Wm. Hogen-

camp Trustee Account, January 9, $1062. C-51A, for $600, dated May 3d, 1902, check of Henry M. Denton, I find under the head of May 20, 1902, an item of $4944.54 charged to Wm. Hogencamp, Trustee, and I think this is part of that same transaction. The other items I am unable to produce except from the Dealers' Check List.

Q. Look at Exhibit C-51A. I notice there is no bank stamp on the back of it? A. There is the "Paid" mark.

Q. I notice there is no bank stamp on the back of it? A. No, sir.

Q. That would indicate what? A. I don't know, except it was some transaction that did not go through anybody else except the Second National Bank or through any other bank excepting the Second National Bank.

Q. Would it indicate anything as to the time when it went through the Second National Bank? A. No, sir; not from the date of it.

Q. There are figures on the bottom of this check, "4944.54"; what does that indicate? A. It does not indicate anything to me.

Q. Are those your figures? A. No, sir. There is an item of charge of May 20th, of the same figures, $4944.54, and it may be a part of that. The Dealers' Check List would show. C-50, check of W. Hogencamp, Trustee, dated March 10, 1902, to the order of Henry M. Denton, Painting, $400, to which are attached two checks of Denton to the order of I. Osserman, one of—

THE VICE CHANCELLOR: He don't want all that; he wants to know whereabouts that amount of money which your check calls for is taken out of the Trustee Account?

A. It was taken out on the 14th day of March, 1902, $400.

THE VICE CHANCELLOR: Without suggesting that it is not entirely proper, Mr. Carey, let me ask what the purpose is of going into all these specifications of items and requiring him to show from the Individual Ledger of the Bank just where every draft was made.

MR. CAREY: I think I have sufficient with these, your Honor. That is all.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Will you please turn to the Cashier's Account in Ledger No. 8, M to Z, page 1031, and tell me what item you find there concerning the $10,000 Cashier's Check, Exhibit C-45, exhibited here this morning? A. It appears on the page just mentioned in an item reading as follows: "Jan. 31, $10,000," a credit.

Q. What year? A. 1905?

Q. As a withdrawal from the Cashier's Account where does it appear? A. In another column on the same page, as follows: "Jan. 28, 1905, Hudson T. Co., $10,000."

Q. The other checks that you have referred to, charges against your Attorney, Rent and Trustee accounts, you have here, have you not? A. Yes, sir.

MR. LANE: That is all the witnesses I have I want to read into the evidence, as admissions against the defendant, Denton, certain portions of his testimony given in the trial of *Richards vs. Shaw.*

THE VICE CHANCELLOR: By consent?

MR. CAREY: Not by consent, because the matter has not been suggested to me.

THE VICE CHANCELLOR: Well, do you consent?

THE VICE CHANCELLOR: I don't know; I would have to think that over.

THE VICE CHANCELLOR: All right; then you cannot read that as admissions.

MR. LANE: Then I will have to call Mr. Black to prove the record.

THE VICE CHANCELLOR: I only rule what the law is. You cannot get up and read something unless it is put in evidence, and you cannot put it in evidence by reading it.

MR. LANE: Will you admit, Mr. Carey, that is a copy of the minutes of the testimony given at the trial of *Richards vs. Shaw?*

MR. CAREY: I do not know; I did not attend that trial, I am thankful to say.

GEORGE W. BLACK, sworn.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Black, did you take the evidence given in the case of *Richards against Shaw,* before Vice Chancellor Garrison? A. I did.

Q. Did you correctly transcribe in longhand the notes that you took in shorthand at the trial? A. I did.

Q. Can you remember, without a reference to a copy of the minutes that you made, what testimony was given by Mr. Denton on that trial? A. I cannot.

Q. I ask you to refer to the testimony that was taken in that trial, that you have transcribed, and refer to Denton's examination on page 111. A. I have done so.

MR. CAREY: I think this is objectionable.

THE VICE CHANCELLOR: Nothing is objectionable yet.

MR. CAREY: I object to it.

THE VICE CHANCELLOR: I overrule the objection. There is nothing to object to.

Q. Now, can you tell, by the use of that record, what Mr. Denton testified to in answer to a question which was there propounded to him, the first question on that page? A. Yes.

Q. I ask you to tell me what Mr. Denton said in reply to the first question that appears on that page, giving us both the question and the answer?

MR. CAREY: I object to that as not tending to prove any fact in this case. The witness, Denton, is here in Court, and

whatever he may be asked in regard to the facts, he is here to testify to.

THE VICE CHANCELLOR: Well, is it not a rule of law that if a party has ever, in writing, or by word of mouth, said anything relative to the subject matter of the suit, the other party may, if he can, prove that as an admission by the adverse party concerning the subject matter of the suit? For instance, suppose that Mr. Lane, instead of asking the stenographer what was said in his presence at a trial, should put Mr. Smith upon the stand and ask him to relate what Mr. Denton said to him about the mortgage which is being foreclosed in this suit, and Mr. Smith was permitted to answer, after an objection, and stated that Mr. Denton told him that he owed the money, had no defense and that he was surprised that his attorney even put in a defense, because he knew he had none, and you were arguing a motion to strike out that testimony, or were arguing to the Appellate Court that it ought not to have been admitted, do you think of any valid argument? Would not that be an admission that they had a right to prove, independent of whether Denton said he said it or not? If the purpose is merely to contradict a witness, or if the purpose is to attack his credibility, I understand the rule is that you must call him and ask him whether he said certain things, and if he says "yes" that ends it; if he says "no," you are permitted to prove that he did say or testify to those things. But does that comprise all the right that the

adverse party has? Has he not the right to prove, by any independent means that he possesses, any statement which, in law, is called an admission, that the adverse party makes against his own interest?

MR. CAREY: I think, perhaps, that is so, your Honor.

THE CHANCELLOR: I think so. I rule that way.

MR. CAREY: There is a further objection which I now make to this question, because it is apparent that the witness Denton was being interrogated as to the note and mortgage which were in the other suit, and which he did not make and which are not in issue in this suit; the note and mortgage concerning which he was then being interrogated were a note and mortgage of Shaw.

THE VICE CHANCELLOR: I will overrule that objection, because I will have to first take the so-called admission, and if I find that it is not relevant, or does not bear on this case, of course that will not help Mr. Lane, nor hurt you; and until I get that, I cannot tell whether or not it is relevant to the very matters that are in issue in the suit I am now trying. So I will overrule that objection, and, so far as the objection is now concerned, will permit an answer to be made by the witness.

A. He was asked the following question, and made the following answer: "Q. You started to tell us about the making of the note and mortgage that are in suit in this proceeding—now go

on. A. Shaw went on and completed the stable and the repairs, and the amount—I don't know what he spent—as he testifies. I heard nothing more about it until the following August I was in the Bank one day and Mr. Hogencamp told me that the matter of Shaw's had not been adjusted and he wanted it fixed up in some shape, and that my matters in the Bank were in a very unsettled shape, and as there were judgments against me in New York, and more to be had probably, that I had better get them in some different shape, as they might be sued on in the State of New Jersey, and the securities that were there and the mortgages that were there, and one thing and another, might be inquired into; and he asked me if I couldn't get Shaw to fix it in some different shape. I told him I didn't know; and he wanted me to go up and see."

Q. Now, I ask you what was the next question and answer that was made?

Objected to on the same grounds. Objection overruled.

A. "By Mr. Vredenburgh: Q. What securities had you then at the Bank? A. There was a mortgage on the property at Lakewood, New Jersey, which I had given Mr. Hogencamp, for $12,000; there was a mortgage there which Mr. Hanford had given me at the time he bought me out, or the time he and Shaw bought me out, for $12,000, on an undivided half of the stable property."

Q. Now, I ask you to refer to page 112, and give me the question and answer, perhaps half way down the page, beginning, "Now, you can tell us everything that took place there?"

Objected to on the same grounds. Objection overruled.

A. The question and answer referred to were as follows: "Q. Now, you can tell us everything that took place there. A. Mr. Hogencamp explained to him that he would like to have the matter fixed up, the thousand dollar and other matters that were there—that he would like to have a mortgage given on the property and two notes for $12,000 each. It was a matter, he said, between he and I, and it would not affect Shaw, and thereupon Shaw, as I understand, or as I remember, signed the two notes."

Q. I ask you to refer to page 116. A. I have done so.

Q. What was the first question there asked by Mr. Vredenburgh, and the answer thereto?

Objected to on the same grounds. Objection overruled.

A. "By Mr. Vredenburgh: Q. I show you a note marked 'G. W. B., 2, for identification, May 6, '08.' Now, it appears that on the 27th day of August, 1902, there was an entry of $25,000 to the credit of Mr. Shaw in his pass book; do you know how that was made up? A. That was to take the place of two twelve thousand dollar notes which were in the Bank, and a thousand dollars Shaw had had to complete the building."

Q. I ask you to turn to page 117, and read the question and answer beginning "A while ago you said that," &c.?

Objected to on the same grounds. Objection overruled.

A. "Q. A while ago you said that the $25,000 was to take the place of two $12,000 notes that were there, and the $1,000 of the overdraft. Were

those notes that were there your notes? A. My notes; yes, sir."

Q. And the next question and answer?

Objected to on the same grounds. Objection overruled.

A. "Q. On which Shaw was an endorser, or don't you remember? A. I don't remember about that."

Q. I ask you to turn to page 119, to the second question and answer, and read them.

Objected to on the same grounds. Objection overruled.

A. "Q. What do you know about those notes—what was the source of them, what was the origin of them? A. I know that notes were given originally for the purchase of one hundred shares of the National Bank stock of the Second National Bank."

Q. I ask you to turn to page 121, and give the answer there, commencing with "the transaction was this"?

Objected to on the same grounds. Objection overruled.

A. The answer on page 121 is as follows: "A. The transaction was this: Mr. Hogencamp transferred to me one hundred shares of the stock of the Second National Bank, at a valuation of $240 a share, in other words, $24,000. At that time I had a deed on Lakewood property, which I owned free and clear; and I had this mortgage of Hanford's on the undivided one-half of the Rink Stables in the Bank. I gave Mr. Hogencamp two twelve thousand dollar notes, to the best of my recollection, secured by a mortgage which I

gave him then on the Lakewood property and the mortgage which I had of Hanford's on the undivided one-half of the stable. The stock was assigned to me, but left at the Bank. Shortly after that Mr. Hogencamp took me down and introduced me to Mr. Hardenburgh, who was then President of the Commercial Trust Company, a few doors below the Second National Bank, and says, 'Mr. Hardenburgh, Mr. Denton can tell you what he wants.' I told Mr. Hardenburgh I would like to borrow six thousand dollars on fifty shares of the Second National Bank's stock. That, as I remember, was in August, 1901, to the best of my recollection. He says, 'Certainly, Mr. Denton, we are very glad to accommodate you.' He gave me the money. I took it up and gave it to Mr. Hogencamp."

Q. I ask you to turn to page 128, and give the questions and answers immediately following the words "By Mr. Vredenburgh:"?

Question withdrawn.

The Vice Chancellor: Before we proceed any further, Mr. Lane, why is not this evidence that is only proper in rebuttal? What has this got to do with your prima facie case? I do not want to stop you if it is a part of your prima facie case, but I am not sure that at the present time this is any part of your prima facie case, is it?

Mr. Lane: I do not suppose it is, really. It is more in rebuttal.

The Vice Chancellor: Yes, you see the trouble with what you are doing now is this: that if Mr. Denton does not go on the witness stand, your prima facie case stands as made, doesn't it; and if he does go on the

stand, and testifies to all of these things the way he did before, then you do not need this. If he goes on the stand and testifies differently, you can not only cross examine him independently, but, I suppose, you can prove what he did say at another time. Unless there is something in this which sheds some light on your prima facie case, and clears up some of the things that are necessary to be cleared up by you to make the prima facie case, I do not want you to put in rebuttal now; because it will result in my having to hear it three times, really—once now, once when Mr. Denton testifies, and once when you go back at him. But do not take the suggestion of the Court, unless you agree with me. If it is a part of your prima facie case, why, put it in. Is there much more of it, Mr. Lane?

MR. LANE: Not so very much more. I will refer to one more matter.

THE VICE CHANCELLOR: So long as we have gone this far, I will take the rest of what you intend to put in of this sort, because then it will all be connected, at least, and perhaps that will be the shortest way to do it.

Q. I ask you to refer to page 135, and will ask you to read the question and answer commencing "Q. Collateral to some of your paper or Mr. Shaw's paper?"

Objected to on the same grounds. Objection overruled.

A. "Q. Collateral to some of your paper or Mr. Shaw's paper? A. At the time I commenced get-

ting in trouble I took the deed for the Lakewood property and the Hanford Mortgage down there and left them in the Bank; I did not owe the Bank a dollar at that time. But afterwards I borrowed on them to pay for this stock. I borrowed on the Lakewood property by giving a mortgage to Mr. Hogencamp for twelve thousand dollars, and assigning this mortgage for twelve thousand dollars on half of the stable."

Q. Then the next question and answer.

Objected to on the same grounds. Objection overruled.

A. "Q. And another note for $12,000? A. Two notes, to the best of my recollection, for twelve thousand dollars each; yes, sir."

Q. And the next question and answer.

(Objected to on the same grounds. (Objection overruled).

A. "Q. And for one note you gave the Lakewood mortgage of $12,000? A. Yes, sir."

Q. And the next, right on down to where it says: "By The Vice Chancellor:"?

(Objected to on the same grounds. (Objection overruled).

A. "Q. That was your note? A. Yes, as I remember it. Q. And for the other note you gave the Hanford mortgage of $12,000? A. Yes, sir. Q. And whose note was that? A. Mine, to the best of my recollection."

Q. And on page 145, the last question and answer appearing on that page, and the first answer on the next page?

(Objected to on the same grounds). (Objection overruled).

A. "Q. Don't you know that all the discounts you were getting were discounts made for you by the Second National Bank? A. Well, of course, I knew nothing about it but I supposed so. Q. You supposed so? A. Yes."

THE VICE CHANCELLOR: Do you want to cross examine Mr. Black, Mr. Carey?

MR. CAREY: I suppose that, inasmuch as Mr. Lane has put in part of the testimony of Mr. Denton in this way, I have a right, by cross examination, to put in any part that I may choose.

THE VICE CHANCELLOR: You cannot draw the fire of the Court. You must do whatever you want to do. I am not going to discuss hypothetical questions with you. I will cross bridges when I get to them.

CROSS EXAMINATION by MR. CAREY:

Q. What did Mr. Denton testify to on the same occasion, as your minutes, on page 112, at the bottom and down to the middle of page 113, show? A. "Q. And the mortgage? A. I don't remember his signing the mortgage at that time; that I don't remember. After that was done Mr. Hogencamp gave me an amount to have Shaw sign a check for, twenty-four thousand and some dollars, I don't remember the exact figures. I went up to the stable and filled out a check for the amount. BY THE VICE CHANCELLOR: Q. In favor of whom? A. To the Second National Bank, as I remember. Q. Go on. A. I filled out the check for that amount, Shaw signed it, and I took it down and delivered it to Mr. Hogencamp. That is about all there was at that day."

Q. What did Mr. Denton testify to, on page 113, beginning with the first question asked by

Mr. Vredenburgh on that page, and down to the interruption on page 114 by the Vice Chancellor where he uses the words "Charles Gifford."

MR. LANE: I object to that as improper cross examination, and having no relation to what I asked the witness, and having reference entirely to a transaction with respect to the particular Shaw mortgage, and the liability of Shaw, which is not in dispute in this case.

THE VICE CHANCELLOR: Well, how could you vindicate, Mr. Lane, the right to get in a so-called admission by Mr. Denton in his testimony in a trial, and say that nothing more than so much of such testimony as you want introduced is relevant, and escape the responsibility of having all that he said brought in?

MR. LANE: I do not understand that all that he said, having reference to every conceivable thing, can go in. What he said with reference to the particular matters that I inquired about can go in.

THE VICE CHANCELLOR: Then your objection must simply be upon the ground that this is not relevant to any inquiry in this suit?

MR. LANE: Oh, it may be relevant to the inquiry in this suit, but it is not a part nor has it anything to do with what I asked the witness about. I did not use his testimony to prove anything with respect to this particular matter.

THE VICE CHANCELLOR: That is not what I understand the rule to be. I understand the rule to be this: If Mr. Denton, instead of being under oath in a Court

room, had been standing in a street corner, and had said these identical things in the presence of Mr. Black, you could have proven what you did prove out of Mr. Black's mouth, if he heard Mr. Denton say that. But I do not understand that that debars Mr. Carey of the right to say: "Now, Mr. Black, tell us all the conversation that took place on the street corner that day between you and Mr. Denton." If you have elicited from the person who heard the admission that which you want to prove, you cannot prevent the other side from getting in everything that was said at that time.

MR. LANE: I think I can. I take this view of it: If I call upon a witness who has heard a party to a suit speak, and that party has admitted in the presence of that witness that he has executed a mortgage, and I call the witness for the mere purpose of proving the execution of the mortgage, I do not think, upon the ground of admissions, that they can bring in what he said about having paid the mortgage after he executed it.

THE VICE CHANCELLOR: Just think what you are suggesting, Mr. Lane: Suppose that what actually took place was this,—that the party said in the presence "I signed that mortgage,"—one sentence; second sentence, "It was a joke;" third sentence, "It was all done simply to fool some people." Now the rule you wish to have applied is that you can ask him what you wish about signing the mortgage, and when the other side, on cross examination asked: "What else did he say about the matters

relevant to this suit?" you say: "Oh, no, you can only cross examine him as to whether he said those identical words that I brought out from him." I will overrule your objection. Now, that is going to be my ruling right along; therefore, why cannot Mr. Carey save time by simply indicating what parts of this testimony he wants to have in?

MR. LANE: Because I want it circumscribed now.

THE VICE CHANCELLOR: Well, you won't get it circumscribed. I will let you object to every question, and will make the same ruling, and I will give you the benefit of objections to every question that Mr. Carey may ask, and I will make the same ruling, that I will permit this witness now to be examined as to everything that Mr. Denton said in his previous testimony. You having brought out some of the things that he said, I will permit the other counsel to bring out everything that he said. What more can you have than that? There is everything in your favor that you want. If I am wrong, the Court of Appeals can quickly reverse me on that. What is it you want? I do not understand what you want.

MR. LANE: I want the examination to take its orderly course.

THE VICE CHANCELLOR: Proceed, Mr. Carey.

A. "BY MR. VREDENBURGH: Q. Now, do you recollect anything being said by Hogencamp that the mortgage would not be recorded? A. Yes, Mr. Hogencamp said the mortgage would not be re-

corded. Q. Do you recollect anything said about there being no interest collected on the mortgage or anything to that effect? A. No, sir. Q. Do you recollect anything being said about Shaw would not be ever called on to pay more than a thousand dollars? A. That was the understanding; yes, sir. MR. HUDSPETH: I object to that. Q. Not the understanding, what was said. THE VICE CHANCELLOR: I will have to strike out the answer. Q. What was said, if anything, about the thousand dollars—do not say the understanding but say what was said and by whom, if you remember. You do not have to say the exact words. A. Well, at the time Mr. Shaw went down with me to the Bank, this matter was done, as I understood, to straighten up the other matter, so as to get me clear from the paper I had there, and it was not to affect Shaw. Q. Well, the question is whether anything was said, when Shaw and Hogencamp were there, that you now recollect, about Mr. Shaw's not being held for more than a thousand dollars—just state what was said, and by whom, as near as you can recollect it? A. I was talking, that is, Mr. Hogencamp and I, and this was to secure the thousand dollars, while the note was for a larger amount. Q. Now, it seems that on the same day in which the check for $24,144.41 was signed there was another check in your handwriting, which has been testified to, to a man by the name of Gifford, for $400? THE VICE CHANCELLOR: Charles Gifford."

Q. What did Mr. Denton testify to, on page 115, beginning with the first question that is asked on that page by Mr. Vredenburgh, and its answer, and the next question by Mr. Vredenburgh and its answer? A. "BY MR. VREDENBURGH: Q. Now, there was another check which was dated the 10th of September, 1902, to the Second National

Bank, for $400, which was certified, in your handwriting also—do you recollect what that was for? A. It is my handwriting. I do not remember anything about the transaction. Q. Do you recollect whether it was written out on the same day, August 27th, but dated on the 10th of September—do you recollect anything about that. A. I do not; no, sir."

MR. LANE: I move to strike that out, as not attempting to explain, contradict or vary anything that I brought out, and irrelevant and immaterial.

THE VICE CHANCELLOR: I will grant that motion. I rule that anything that is not relevant, or material, and does not cast any light on what you asked him shall go out.

Q. What did Mr. Denton testify to on pages 116 and 117, the questions being asked by the Vice Chancellor, beginning with the first question asked by the Vice Chancellor, on page 116. A. "BY THE VICE CHANCELLOR: Q. Yes, but what did he give the Bank by which they gave him credit for $25,000? A. That is the time he gave the notes. Q. Well, what notes? That is what he asks you. A. He gave two notes of $12,000. Q. Well, that would make only $24,000. Mr. Vredenburgh calls your attention first to the fact that in the pass book of the Bank, at the time this transaction took place, there is a credit to Mr. Shaw of $25,000; now, he asks you, if you know, to tell us what Mr. Shaw gave to the Bank which caused the Bank to give him credit for $25,000. Your answer was, 'Why, he gave them two notes for $12,000,'—that, of course, only makes $24,000. Now, what did he give for the other thousand? Aren't you wrong in saying he gave two notes for $12,000? MR.

VREDENBURGH: That is the date of the mortgage, Mr. Denton, and the mortgage is for $13,000. THE VICE CHANCELLOR: And the note that was given at that time was for $13,000. A. Well, he must have given a note, then, for $13,000. He gave a note for $13,000, and another note for $12,000."

MR. LANE: I have no objection to that.

Q. What did Mr. Denton testify to, on page 117, beginning with the last question asked by Mr. Vredenburgh, and its answer on that page, and the top of the next page. A. "Q. Was this note that you have now produced, G. W. B., 2, for identification, one of the notes which the $25,000 took up or paid? A. I think this is a note that took up a note that I had there. This is a note that Mr. Hogencamp filled in and asked me to take up and have Mr. Shaw sign, which I did."

Q. What did Mr. Denton testify, as shown on page 119 of your minutes, in the first question and answer by Mr. Vredenburgh on that page? A. "BY MR. VREDENBURGH: Q. Now, did Shaw ever get any money for the $24,000 of notes that you say were taken up by the $25,000 credit? A. No, sir."

Q. What did Mr. Denton testify, as appears on your minutes, on page 122, from and including the first question asked by the Vice Chancellor, down the rest of that page to the place I have indicated on page 123? A. "BY THE VICE CHANCELLOR: Q. Didn't you give the Commercial Trust Company anything for it? A. I gave him a note; I gave him my note, secured with fifty shares of Bank stock, and took the money up and gave it to Mr. Hogencamp. As the note came due the interest was paid at different intervals until May, 1902, as I remember it, the 1st day of May. Q. Did you pay it yourself out of your own funds?

A. I paid it with money that Mr. Hogencamp gave me. They then had moved down to this building (meaning the Commercial Trust Company Building, 15 Exchange Place, Jersey City). That was May 1st, 1902. The following day I went over to see Miles Tierney, who was President of the Hudson Trust Company in Hoboken, having known him as a neighbor; I went over to see—

MR. HUDSPETH: I object to that. BY MR. VREDENBURGH: Q. Did you go there at the suggestion of Mr. Hogencamp? A. Mr. Hogencamp wanted me to go and see Mr. Tierney and make a loan from the Trust Company. Q. What did you do? A. I took the car and went over and saw Mr. Tierney, and told him I had one hundred shares of the Second National Bank stock, and would like to make a loan. BY THE VICE CHANCELLOR: Q. How much did you get? A. I got $13,500. Q. And you took up the $6,000 at the Commercial to get that fifty shares. A. Yes, sir. Q. And then you pledged the whole one hundred shares, with your note, to the Hudson Trust Company? A. Yes, sir."

MR. LANE: I move to strike that out, on the ground that it is not material or relevant to anything that I asked the witness.

THE VICE CHANCELLOR: I will hear you, Mr. Carey. This is all about a totally different matter than anything he asked the witness or inquired about.

MR. CAREY: This was in regard to transactions that took place in connection with the stock. Now, he has asked for statements by Denton in relation to these notes which would tend to show a purchase of the stock. This testimony showed that there was no purchase of the stock, that

this stock was dealt with for Mr. Hogencamp's benefit.

THE VICE CHANCELLOR: Can you point out to me where he asked him anything about the purchase of the stock? If he did, then I am going to admit this.

MR. CAREY: Yes, he asked him one question in regard to these notes, what the notes were given for, that they were given in purchase of the stock, and a mortgage given to secure the stock.

THE VICE CHANCELLOR: Yes, I guess that is so. I will deny the motion to strike that out. It may stay.

MR. CAREY: Now, Your Honor, if we may adjourn now, I will go through this testimony, and pick it out in such shape, and submit what I propose to ask to Mr. Lane, so that we will not waste half the time that we will otherwise.

THE VICE CHANCELLOR: Yes, I will do that. We will adjourn now until tomorrow morning, at 10 o'clock.

Recess until Wednesday, September 28th, 1910, at 10 o'clock, A. M.

Jersey City, September 28th, 1910.

Hearing of the cause resumed at 10 o'clock, A. M.

GEORGE W. BLACK, recalled.

CROSS EXAMINATION RESUMED by MR. CAREY:

Q. What did Mr. Denton testify to, as appears in your minutes, page 124 and 125, between the lines indicated by the letter "T."

MR. LANE: I object to it, on the ground that it does not tend to modify or amplify any admission that I introduced in evidence.

THE VICE CHANCELLOR: My trouble is that I do not remember what you introduced. Mr. Carey, what admissions by Mr. Denton, which Mr. Lane brought out from his previous testimony, do you think this affects, explains, modifies or casts any light upon?

MR. CAREY: The testimony which he introduced tended to show, as he thought, a bona fide purchase of stock, and this goes directly to contradict the idea of a bona fide purchase of stock.

THE VICE CHANCELLOR: Do you concede, Mr. Lane, that you brought out an admission made by Mr. Denton on the witness stand that tended to show that the purchase of stock from Mr. Hogencamp by Mr. Denton was a bona fide purchase?

MR. LANE: The only evidence that I put in that bore upon that was on page 121, where he said that "The transaction was this, etc."

THE VICE CHANCELLOR: Well, that is Mr. Denton's version at that place, of the transaction about the stock, and this portion of the testimony, on pages 124 and 125, which Mr. Carey now calls upon this wit-

ness to repeat, I see concerns the same matter of stock.

MR. LANE: Yes, but concerns that which the witness had done with the stock long subsequent to the purchase, and had nothing to do with the time of the purchase. It deals with the same subject matter, I concede, but it does not amplify or modify what he said with respect to the actual purchase of the stock; it was something he did with it afterward.

THE VICE CHANCELLOR: I will overrule the objection, and admit the testimony, upon the same theory that I disclosed to counsel yesterday,—that anything which a witness, whose admissions are being offered by one side, may have said which casts any light upon the admission offered must be admitted, in fairness to the witness; and because it is relevant to the admission.

A. "Q. Now, have you ever got that stock back? A. No, sir. Q. Ever get anything for it? A. There might have been dividends paid at different times, which I endorsed over to Mr. Hogencamp at once. BY THE VICE CHANCELLOR: Q. No, he means did you personally get anything out of it? A. No, sir. BY MR. VREDENBURGH: Q. Did you exercise any right to vote on it, or anything of that sort? A. I was dictated to by Mr. Hogencamp; I did with it as Mr. Hogencamp told me. Q. Well, did you ever vote on it? A. No, sir. Q. Were you ever present at any meeting? A. No, sir. Q. Then what did you do? A. Gave a proxy? Q. To whom? A. Mr. Hogencamp."

Q. What did Mr. Denton testify, as appears on your minutes, page 126, between the lines indicated by the letter "U"?

MR. LANE: I make the same objection.

THE VICE CHANCELLOR: I shall sustain the objection, because I do not recall that Mr. Lane introduced any testimony by Mr. Denton, showing any admissions about judgments, one way or the other, unless Mr. Carey can call my attention to something.

MR. CAREY: There was nothing with respect to judgments; but the point with respect to this testimony is whether there was a purchase or not a purchase, and this tends to show the situation of the witness with respect to his capacity, his capability for the purchase.

THE VICE CHANCELLOR: I shall adhere to the ruling which I just suggested, I will overrule the question.

Q. What did Mr. Denton testify, as appears by your minutes on the bottom of page 126, beginning with the last question on that page and running down to about the middle of page 127, between the lines indicated by the letter "V"?

MR. LANE: I do not suppose there is any legitimate objection to that.

THE VICE CHANCELLOR: I will admit that.

A. "Q. Well, how was it that you purchased at that time, from Mr. Hogencamp, this stock, what was the true transaction about is? A. Well, prior to that I had been a large operator in New York in real estate, and had been helped, through the Second National Bank and Mr. Hogencamp, with large amounts of money; and on April 2nd, 1900, I paid the Bank with a check to Mr. Hasking's order $57,411.09, to the best of my recollection,

which paid the indebtedness to the bank. After that this stock was assigned to me by Mr. Hogencamp, to assist Mr. Hogencamp as I understood it. He wanted to raise some money, and he owned this stock, and he couldn't borrow from the Bank and he could borrow on my notes with these mortgages as security, and I could also use the stock to make any loans on,—in other words, I was trying to assist Mr. Hogencamp."

Q. What did Mr. Denton testify, as appears by your notes, on page 128, between the lines indicated by the letter "W"?

MR. LANE: I object to that as not tending to modify, or amplify any admission that I offered in evidence.

THE VICE CHANCELLOR: I am inclined to sustain the objection.

MR. CAREY: It relates to the stock transaction.

THE VICE CHANCELLOR: No, it relates to what happened when he went to the Hudson Trust Company to get a loan on this stock; and it seems to me not to cast any light upon the quqestion, because whether it was his stock or Hogencamp's stock, the fact that either one of them, or both, tried to get the largest loan they could upon it does not seem to me to cast any light upon the question of whose stock it was. I shall exclude it.

Q. What did Mr. Denton testify, as appears by your minutes, on page 144, between the lines indicated by the letter "X"?

MR. LANE: I have no objection to that.

THE VICE CHANCELLOR: I will admit that.

Q. "Q. Do you mean to tell this Court, Mr. Denton, that, with the understanding with Mr. Hogencamp that Mr. Shaw was not to be bound beyond one thousand dollars, you went to the trouble to get Mr. Shaw to give a thirteen thousand dollar mortgage to Mr. Hogencamp and a note for $13,000? A. That is what I did.

Q. What did Mr. Denton testify, as appears by your minutes, on page 146, between the lines indicated by the letter "Y"?

MR. LANE: I have no legitimate objection to that.

THE VICE CHANCELLOR: It is admitted.

A. "Q. And when you put up the Lakewood mortgage and the Hanford mortgage as collateral, either making the Lakewood mortgage directly to Hogencamp, or an assignment of the mortgage, and assigning the Hanford mortgage to Mr. Hogencamp, didn't you do that to protect the Bank? A. No, sir; I did that to help Mr. Hogencamp."

Q. What did Mr. Denton testify, as appears by your minutes, at the bottom of page 148 and top of page 149, between the lines indicated by the letter "Z"?

MR. LANE: I do not object to that.

THE VICE CHANCELLOR: I will admit it.

A. "Q. Mr. Denton, you say that the arrangement was with Mr. Hogencamp that Shaw should only be held for a thousand dollars, and that, substantially, the $12,000 was simply a matter of form; is that right? A. Yes, sir."

Q. What did Mr. Denton testify, as appears by your minutes on page 154 between the lines indicated by the letter "A 1"?

MR. LANE: I object to that as not tend-

ing to amplify or explain any admission that I put in.

THE VICE CHANCELLOR: I shall overrule that objection, because some of the Denton testimony that has been admitted in answer to your questions concerned the matter of these mortgages, and I think that anything that the witness said at that time about those mortgages is, therefore, relevant and proper.

A. "Q. Mr. Denton, regarding the Lakewood mortgage,—you claim that that is being withheld from you illegally? A. I certainly consider it was. Q. Have you always felt that way? A. Yes, sir. Q. Held by whom, the Bank or Mr. Hogencamp? A. I suppose Mr. Hogencamp. Q. Why do you so suppose? A. Why, I really never knew what became of it. It was not recorded, and I don't know anything about it. Q. Don't you know the Bank originally had it? A. I don't know the Bank had it."

Q. What did Mr. Denton testify, as appears by your minutes on page 155, bottom and page 156, top, between the lines indicated by the letter A-2?

MR. LANE: I have no objection to that.

THE VICE CHANCELLOR: It is admitted.

A. "Q. In this stock transaction that you have referred to you say you turned the stock back to Mr. Hogencamp? A. Yes, sir. Q. And at what price? A. On January 27, 1905, to the best of my recollection, Mr. Hogencamp gave me the money to go to Tierney, or the Trust Company— Q. I don't want that; you have told me that— THE VICE CHANCELLOR: That is all right; go on. A. (Resuming)—I took the ten thousand dollars over to the Hudson Trust Company. I went there

and paid the note and got the stock and came over and handed it to Mr. Hogencamp, and I have never seen or heard of the stock since."

MR. LANE: I want to offer, if Your Honor please, in connection with the cross examination, the testimony on page 146:

RE-DIRECT EXAMINATION by MR. LANE:

Q. Did Mr. Denton testify, as appears on page 146 of your minutes, as follows: "Q. And weren't you securing, and intending to secure the Second National Bank by any of the collateral that you put up for discounts made for you or for your benefit? A. I wanted to keep the Second National Bank right in every respect."?

MR. CAREY: That does not relate to anything which has been brought out on the cross examination of this witness. Mr. Lane ought to have put in such of the testimony as he wanted to on the direct examination, and not go at it piecemeal in this way.

THE VICE CHANCELLOR: On page 146 you secured the admission in evidence of Mr. Denton's examination contained between the letters "Y," which relates directly to the matter of this mortgage and other mortgages being held by Mr. Hogencamp, and the capacity in which he held them, and the whole testimony at that place is relevant in its parts to each other, and I am going, therefore, to admit the testimony offered by Mr. Lane, and permit the witness to answer the question; and in doing so I am going to require the witness to read the two questions and answers in their con-

secutive order as they appear, because then the Court will have before it exactly what took place—the order, in other words, in which the statements or admissions came, which bear materially upon each other; so I want the section marked "Y" which was admitted now upon Mr. Carey's question and the section marked A-3, which is admitted now on Mr. Lane's question, to appear in their proper order, that is, A-3 first, and the section "Y" second, so that the whole thing will then read as it appears in the minutes, the whole section being now marked A-4.

A. "Q. And weren't you securing, and intending to secure the Second National Bank by any of the collateral that you put up for discounts made for you or for your benefit? A. I wanted to keep the Second National Bank right in every respect. Q. And when you put up the Lakewood mortgage and the Hanford mortgage as collateral, either making the Lakewood mortgage directly to Mr. Hogencamp, or an assignment of the mortgage, and assigning the Hanford mortgage to Mr. Hogencamp, didn't you do that to protect the Bank? A. No, sir; I did that to help Mr. Hogencamp."

MR. LANE: Before I rest I want to offer in evidence the order permitting this suit, made by the United Stated District Court for the District of New Jersey.

THE VICE CHANCELLOR: Is there any objection?

MR. CAREY: No, I do not object.

THE VICE CHANCELLOR: I suppose the permission was necessary because of—

MR. LANE: Denton is in Bankruptcy.

THE VICE CHANCELLOR: I will admit it, let it be marked Exhibit C-62, September 28, 1910.

(The paper was so marked).

THE COMPLAINANTS REST.

THE CASE FOR THE DEFENDANTS.

THOMAS O'CALLAGHAN, Esq., sworn.

DIRECT EXAMINATION by MR. CAREY:

Q. Mr. O'Callaghan, where do you live? A. 546 West 162nd Street, Borough of Manhattan, City of New York.

Q. And your business is what? A. Lawyer.

Q. And you have been a lawyer for how long? A. Over thirty years.

Q. A member of the bar of what State? A. The State of New York.

Q. Do you know Henry M. Denton? A. I do.

Q. When did you become acquainted with him? A. In 1897.

Q. Do you know William Hogencamp? A. I do.

Q. When did you become acquainted with him? A. About the last of 1899 or the first part of 1900, I am not sure which.

Q. And did you transact legal business for Mr. Denton and Mr. Hogencamp? A. I did.

Q. When did you begin transacting business in which those two men were interested? A. In January, 1900, or possibly December, 1899, I am not sure as to the exact date.

Q. And that business related to affairs where,—in New York or New Jersey? A. In the City of New York.

Q. And what were those affairs?

MR. LANE: I object, on the ground that it must be information derived by this witness in the confidential capacity of attorney and client.

THE VICE CHANCELLOR: Between whom?

MR. LANE: Mr. Hogencamp and him, he says.

THE VICE CHANCELLOR: I have to know in whose behalf you are claiming privilege.

MR. LANE: Mr. Hogencamp's.

THE VICE CHANCELLOR: I shall overrule that objection. He is not asked now to go into any confidential communications between him and his client, nor is he asked to go into any matter which violates confidence between attorney and client. He is merely being asked now in general what the matters were. He is now asked to state in a general way what the nature of the business was. If he attempts to go into specification I shall stop him and allow you to be heard before I rule.

A. Taking an assignment of a mortgage on a building at the southwest corner of 68th Street and West End Avenue, from Henry M. Denton to William Hogencamp.

THE VICE CHANCELLOR: "Taking" an assignment?

THE WITNESS: Drawing an assignment from Denton to Hogencamp, or attending at the drawing of it, I am not sure which.

MR. LANE: I move to strike that out, as information which he could only derive in a confidential capacity.

THE VICE CHANCELLOR: There is nothing to show that at that time Mr. Hogencamp was his client.

MR. LANE: Yes, he has already said so.

THE VICE CHANCELLOR: He does not say that at that time Mr. Hogencamp was

his client. I will permit you to cross examine as to that before I rule. He has not said that from his inception of his knowledge of Mr. Hogencamp, Mr. Hogencamp was his client; he says that he did at one time represent Mr. Hogencamp, and he also represented Mr. Denton.

BY MR. LANE:

Q. What date was this you are talking about, Mr. O'Callaghan? A. Either January, 1900, or December, 1899.

Q. You started to do legal business for Mr. Hogencamp in January, 1900, you testified? A. I think not.

Q. You have not so testified? A. No, sir; I said I had known him from January, 1900.

MR. LANE: I ask that the witness' testimony be read on that point.

(Former testimony of the witness repeated as follows):

"Q. Do you know William Hogencamp? A. I do. Q. When did you become acquainted with him? A. About the last of 1899 or the first part of 1900, I am not sure which. Q. And did you transact legal business for Mr. Denton and Mr. Hogencamp? A. I did. Q. When did you begin transacting business in which those two men were interested? A. In January, 1900, or possibly December, 1899, I am not sure as to the exact date."

THE VICE CHANCELLOR: That does not say that he represented Hogencamp at that time, that says that it was legal business in which they were interested.

New Jersey State Library

Q. Did you represent Mr. Hogencamp in January, 1900? A. No, sir.

Q. Did you represent Mr. Hogencamp at any time? A. Yes, sir.

Q. When? A. Subsequent to March, 1900.

Q. Not before that? A. No, sir.

THE VICE CHANCELLOR: I will overrule the motion to strike out.

BY MR. CAREY:

Q. Do you remember the amount of the mortgage in question? A. I could not tell you that; you have got the record here somewhere of the sale of the property afterwards.

Q. What was the financial condition of Mr. Denton in the year 1900, if you know? A. He was overloaded with lawsuits.

Q. And did you appear for him in those lawsuits? A. I did.

Q. Where? A. In the City of New York and the City of Brooklyn at that time, I think, or the Borough of Broklyn.

Q. What was the nature of those suits, what were they about? A. Well, a number of them were suits claiming to be for services rendered to Denton. Denton's defense was that he had nothing to do—

MR. LANE: I object to what Denton's defense was.

THE VICE CHANCELLOR: I overrule the objection.

A. Denton's defense was that he had nothing to do with it, that the other parties were the owners of the property and the employers of these people, and that if Denton was responsible at all it would be only as a guarantor.

Q. During what part of the year 1900 did this condition continue? A. Oh, it had continued from prior to that, in 1899.

Q. And how long? A. I think the first judgment that I appeared for Denton in, or was obtained against him, was either May or June, 1899; then he got three judgments against him which were subsequently paid.

Q. And during the year 1900 was Mr. Denton subject to suits in New York, to your knowledge? A. Oh, a number of them. We were paying off money from time to time; sometimes we would make weekly payments, other times we would make two, semi-weekly; others, monthly payments, —anything to hold off the catastrophe.

Q. And do you know whether or not those facts came to the attention of Mr. Hogencamp? A. They certainly did.

Q. How do you know they came to his attention? A. Why, I went to him to get money.

Q. During the year 1900? A. In 1900.

Q. How frequently? A. Well, in 1900 we had a foreclosure of the 79th Street and Amsterdam Avenue property, O'Brien vs. Denton, and I went with Mr. Denton to Mr. Hogencamp, and asked him to come in and bid on that property. I explained to him that we had ample equity there, and it was simply a question of giving us time to turn ourselves, and that there was money in the property and it could be protected, but that we needed ready money at the bidding, we needed to pay ten per cent. at the foreclosure of the mortgage, and asked him if he would not help us. He said "Yes." He came over to the sale at the auction and stood beside Mr. Denton and myself. I bid the property in. Mr. Hogencamp gave his individual check for the ten per cent., and also

paid the auctioneer's fees and auction room fees, amounting to $17.00, and we took title in the name of William H. Redfield, that is, we had the bid made out to William H. Redfield and as soon as we came back to the office I drew an assignment of the bid to William Hogencamp and delivered it to him and he went about his business to Jersey, or we went to lunch, I don't know which. That was the first time where he came to the assistance and gave us money, that I remember.

Q. Now, after that time, during the year 1900, did you have any conferences with Mr. Hogencamp relative to Mr. Denton's condition, and his necessities for money? A. Oh, yes, numbers of times; whenever we needed money and Denton hadn't it, why, if Hogencamp came in I would go at Hogencamp for money.

Q. Came in where? A. Came into my office with Denton.

Q. Did Mr. Hogencamp come with Mr. Denton frequently to your office? A. I couldn't say "frequently," no; I wouldn't like to say that; I should judge that he came there during 1900 something in the neighborhood of fifteen or twenty times, after the 1st of June or July of 1900.

Q. During the year 1901 what was Mr. Denton's financial condition? A. Just the same, and even worse, if anything.

Q. Do you know whether judgments were recovered against him in New York during the year 1901? A. Yes, judgments were recovered against him in 1901.

Q. Can you recall how many? A. My impression is there were three; it might be more, but three is what I remember now during 1901.

Q. What were those judgments? A. Well, one was the Batavia Wood Working Company, for

over $14,000; that was in 1901. There was one for a glass man by the name of Friedlander, or the Estate of Friedlander, a glass man over in Brooklyn; and my impression is that there was another judgment rendered against him by Wells, Newton & Co. that might have been the last of 1901 or the beginning of 1902, I am not just positive as to that date.

Q. Do you recall the amount of those judgments?

THE VICE CHANCELLOR: He has given us one, do not ask him that over again.

A. Wells, Newton's I think was over $1,000; Friedlander's was about three or four hundred dollars, I am not sure exactly about that.

Q. And the other one? A. Over $14,000.

Q. Can you recall a judgment recovered against Mr. Denton in 1901 by a Missionary Society in a foreclosure proceeding? A. Now, I am not sure whether that was 1901 or 1902. It was a foreclosure of a Chambers Street property. Yes, sir, there was such a judgment, and the property was sold, and a deficiency judgment was entered up against Denton on that bond.

Q. Do you remember the size of the judgment? A. My impression now is that it was over $10,000.

Q. Did Mr. Denton's financial condition become any better in 1902? A. Well, I cannot answer that question exactly in that way. My impression is that it was if he had got the money that Hogencamp got out of his properties, he would have been in a better position.

Q. As a matter of fact, do you know whether he was in any easier circumstances financially in 1902? A. No, I don't say that he was; I couldn't say that he was.

Q. How long did you continue to represent Mr. Denton? A. Up to 1907 or '08, I guess.

Q. And during all that time were you familiar with his financial circumstances? A. As far as I could learn, yes, sir, from Denton's statements to me and from facts connected with the lawsuits I had for him.

Q. Now, Mr. O'Callaghan, can you tell us about a transaction in connection with the Beard Building on Liberty Street, New York City? A. Yes, sir.

Q. Was Mr. Denton interested in that? A. He was.

Q. And Mr. Hogencamp? A. Subsequent to Denton getting possession of it Hogencamp was interested,—at least, he got all the money out of it.

Q. Well, will you tell us what you know about the purchase and sale of the Beard Building in Liberty Street, New York?

MR. LANE: I ask the privilege of cross examining as to when that was.

THE VICE CHANCELLOR: Yes.

BY MR. LANE:

Q. When was that? A. March, 1901.

Q. Did you represent Mr. Hogencamp at that time? A. Not in that transaction.

Q. Did you represent him as attorney at that time? A. I am inclined to think not.

Q. You did not represent him? A. No, I did not represent him.

Q. How long before that had you ceased to represent him? A. Well, now, do you mean by "representing him" individually, or in connection with these properties?

Q. In connection with those properties, or individually, or in any other capacity as attorney and client? A. Well, as attorney and client I do not believe—will you let me look at my register just a moment here?

Q. Certainly. A. (After examining book now produced by the witness). I do not think I represented him in March, 1901; I think I represented him after March 20th, 1901.

Q. Did you represent him before March, 1901? A. My impression is it was after March, 1901.

Q. Then you were mistaken a few moments ago when you testified that you represented him in March, 1900? A. Well, I will tell you exactly now when I represented him (referring to the witness' register book): That should have been March, 1901, instead of March, 1900, that I represented him.

Q. And this transaction that you are now talking about occurred when? A. March, 1901.

Q. And you did not represent Mr. Hogencamp in any part of that transaction. A. I did not represent Mr. Hogencamp in that transaction as far as I knew.

Q. Don't you know whether you represented him or not? A. All I know is he got the money from the proceeds of that sale; but I supposed I was representing Denton.

MR. LANE: I move to strike that out as not responsive, so far as Mr. Hogencamp's getting the proceeds of the sale is concerned.

THE VICE CHANCELLOR: I overrule the motion.

Q. Were these conversations that you had with Mr. Hogencamp and Mr. Denton subsequently re-

duced to writing by the delivery of deeds or assignments?

THE VICE CHANCELLOR: How could a conversation be reduced to writing by the delivery of a deed?

MR. LANE: Well, the result of the conversations.

A. What time are you talking about?

Q. The Beard Building transaction we are talking about. A. Yes, there was a mortgage for $14,000 given to Hogencamp after we took possession of the property.

MR. LANE: I move to strike that out.

THE VICE CHANCELLOR: I do not understand how a conversation can be reduced to writing by the delivery of a deed, and I shall overrule the question because it is unintelligible. I do not know what it means, and no answer can aid me to know what it means.

Q. Was the result of the conversation that you had with Mr. Hogencamp and Mr. Denton the delivery of mortgages and deeds?

THE VICE CHANCELLOR: Yes, or no.?

A. At what time?

THE VICE CHANCELLOR: This Beard Building he is talking about now.

A. Yes.

THE VICE CHANCELLOR: Do you renew your objection?

MR. LANE: I object now, on the ground that whatever transpired was subsequently reduced to writing, the result is in writing, and the writing should be produced.

THE VICE CHANCELLOR: I overrule the objection. I have not ruled upon the question as to whether or not he can state that mortgages or deeds were given, you understand; I am overruling Mr. Lane's idea that if a man has a conversation in which he promises to do a certain thing, that an arrangement shall be made at a certain time, and that as part of that arrangement he delivered a deed, that that makes the only evidence that is possible. I cannot conceive that that would be the rule of evidence. But I am not thereby ruling that this witness can say that mortgages were given; and if an objection is made that a mortgage was given, it must be produced or its absence accounted for.

Question repeated as follows:

Q. Well, will you tell us what you know about the purchase and sale of the Beard Building in Liberty Street, New York? A. Denton was the owner, either in his own name or someone else's name, of a building on the south side of 125th Street, City of New York, Borough of Manhattan, between Fifth and Sixth or Lenox Avenues, generally known as the Standard Gas Building. He traded the Gas Building on 125th Street in a three-cornered deal for a piece of property on Twentieth Street between Broadway and Fourth Avenue, on the south side of Twentieth Street, with a man by the name of Coffin, or some Realty Company in whose name Coffin carried the property; and the Twentieth Street property was traded with the Metropolitan Life for the Beard Building on Liberty Street between Washington and Church, I think it was. By the terms of that agreement the Metropolitan Life—

MR. LANE: I object to the terms of the agreement.

THE VICE CHANCELLOR: Yes, how can he state properly the terms of a written contract? I am assuming that it was in writing?

THE WITNESS: The contract was in writing; yes, sir.

BY MR. CAREY:

Q. Do you know whether or not Mr. Hogencamp got any money in connection with this trade? A. He did, sir.

Q. And how much? A. (Referring to memorandum now produced by the witness: $15,654.47, on March 20, 1901. The check was made to the order of William H. Redfield, which was delivered to Mr. Hogencamp.

MR. LANE: I object to the testimony as to the check, unless that is produced, or its loss accounted for.

THE VICE CHANCELLOR: Why is not that a valid objection?

MR. CAREY: Well, if Your Honor please, this is not a paper which is in our possession; and the witness' testimony is that a check was made and delivered to Mr. Hogencamp.

THE VICE CHANCELLOR: I shall sustain the objection.

BY THE VICE CHANCELLOR:

Q. How much money did you say he got? A. $15,654.47.

Q. And you say he got that on the 20th of March, 1901? A. That was the day, sir.

Q. Proceed. A. And also got a mortgage for

$14,000, on demand, made by William H. Redfield to him, William Hogencamp.

MR. LANE: I move to strike that out, because the proper evidence of a mortgage is either a certified copy of the record or a production of the original paper.

THE VICE CHANCELLOR: I will strike out, under Mr. Lane's insistment, the oral testimony concerning the existence of the mortgage.

Q. Did you hear Mr. Hogencamp's testimony in regard to receiving a mortgage in connection with the Beard Building, which he has given in this suit? A. Yes, sir.

Q. And is this mortgage to which you now refer the same mortgage spoken of by Mr. Hogencamp? A. The same mortgage that Mr. Hogencamp got from Mr. Redfield; yes, sir.

THE VICE CHANCELLOR: Strike that out. Read the question.

(Question repeated). A. It is.

Q. Was there more than the one $14,000 mortgage in connection with this trade for the Beard Building? A. No, sir.

Q. Was this Beard Building subsequently sold or disposed of? A. Yes, sir.

Q. And when was it disposed of? A. The contract for the sale of the building was made on the 10th of June, 1901.

Q. Were you present at the time the contract was made? A. Yes, sir.

Q. Was Mr. Hogencamp present? A. Yes, sir.

Q. Was Mr. Hogencamp present at the time the Beard Building was acquired, at the closing of the title? A. Yes, sir.

Q. And do you know whether or not Mr. Hogencamp got any money at the time of the making of the contract for the sale of the Beard Building? A. Yes, sir.

Q. And when did that take place? A. June 25th, 1901.

Q. And was Mr. Hogencamp present that time? A. He certainly was.

Q. Did he get anything upon the sale, upon the passing of the title to the Beard Building,—and if so, what? A. Over $14,000.

Q. In cash, or in its equivalent? A. In cash or the equivalent.

BY THE VICE CHANCELLOR:

Q. Well, was it the payment of the $14,000 mortgage? A. Oh, no.

Q. The mortgage still, as you understand it, remained on the building, did it? A. Yes, sir.

Q. And, in addition to that, Mr. Hogencamp, on the 25th of June, 1901, got, out of the proceeds of the sale of the Beard Building, over $14,000? A. Yes, sir.

BY MR. CAREY:

Q. What was the next transaction which you attended, and in which Mr. Denton was interested—the next real estate transaction? A. On August 2nd, 1901.

Q. What was that? A. Mr. Denton made a trade for the 79th Street and Amsterdam Avenue property with the Metropolitan Life for four pieces of property and a loan on the 79th Street property.

Q. Was Mr. Hogencamp present? A. At the closing; yes, sir.

Q. When did the closing take place? A. August 2nd, 1901.

Q. And did Mr. Hogencamp receive anything out of the closing of that title? A. My impression was $2,955.07.

Q. What do you mean by saying your "impression"? A. Every time a piece of property of Denton's was sold it could not be sold without Hogencamp's consent and Hogencamp's being present and getting the check. The checks were made to the order of Redfield, who would carry the title, and Hogencamp was there and took the checks. Redfield would endorse them, and then Hogencamp would take the checks and walk away with them.

Q. Now, you say your impression is that he got $2,955.07,—do you know the fact? A. There was a check for $2,955.07, which was a surplus coming to Denton, or Denton's representative, and, as was the custom, Mr. Hogencamp was there to get the money, and he got it, as I recollect it.

Q. What was the next transaction which you attended? A. The next transaction was about the 12th of August. Just prior to the 12th of August, 1901, Mr. McKelvey was pressing us under the Batavia Wood Working claim for some $14,000 which he had against Denton.

Q. What was the form of that claim at that time?

THE VICE CHANCELLOR: He means was it in suit, or what?

A. Yes, it was in suit. I doubt whether there was a judgment rendered; my impression is that there was not a judgment rendered; my impression is that the suit was commenced, we answered, the case was on the calender up in Batavia, and

I had moved it off the calender on a technicality, and that Denton had given a check, dated to be paid on the 25th of July, and a note to be paid some time in August. The check had come back N.G., and the note was coming due, and McKelvey insisted that we take care of the note and check or they would file the judgment. Now, that is my impression.

10

By The Vice Chancellor:

Q. Go ahead; tell us about this transaction just prior to the 12th of August, 1901? A. I went with Mr. Denton to the Second National Bank in Jersey City, under an appointment to meet Mr. Hogencamp.

By Mr. Carey:

Q. Do you know what date you went there?

20 A. The 12th day of August, 1901.

Q. Can you verify that date, Mr. O'Callaghan? A. Yes, sir.

Q. Go on; tell what occurred. A. I went there with Mr. Denton and met Mr. Hogencamp, and told Mr. Hogencamp that we were in a very bad position in reference to this large judgment or claim of the Batavia Company; that Mr. McKelvey was too well acquainted with Mr. Den-

30 ton's business to let him get in to make good a fourteen or fifteen thousand dollar claim; that he would rip up everything; and that he was aware of the fact that Redfield was only a dummy for Denton; and that there would be a terrible time, and cause him and Denton considerable trouble.

Q. By "him" you mean Hogencamp? A. Yes.

Q. Go on. A. Hogencamp said that he could not give us any ready money, that he hadn't any

40 ready money, and that the only thing he could pos-

sibly do for us was to give us some shares of the Second National Bank. He said that we could go over to New York and borrow on the Second National Bank stock and use that money, but that we should not pledge it until we agreed with him the amount that it was to be pledged for. He handed us 50 shares of stock of the Second National Bank. We went over and saw Mr. McKelvey at his office on Broadway. I first had gone to the Trust Company of America to see if they would loan on it, and they refused to do it; and we then went to McKelvey, and McKelvey said that he could get from some National Bank (my impression is it was the Chase or some other bank around the corner from his office) $6,000 on a three months' note, Denton's note, for $6,000 and these 50 shares of stock put up as collateral, provided we would pay the check of Denton which was due, the note which was coming due on August 20th—

By Mr. Lane:

Q. Are you using a memorandum there? A. Yes, sir.

Q. What is the memorandum? A. It is the day book of my office.

Q. Made up at the time of the transactions? A. Made up in 1901; yes, sir, on the evening of the 15th or morning of the 16th.

By The Vice Chancellor:

Q. From day to day? A. From day to day.

Q. Proceed. A. (Resuming)—pay them, and allow him $200 as a bonus for getting the cash.

Q. Have you stated how much this check was that you were to take up? A. The check was $1,005, with interest; and the note was $1,000, with interest and a protest fee.

Q. Did this arrangement with McKelvey require you to pay the note as well as take up the check? A. Yes, sir.

Q. And that was to be outside of the $6,000? A. No, that was to be taken out of the $6,000.

Q. Both of those sums were? A. Yes, sir.

Q. And the $200 bonus? A. And the $200 bonus.

Q. All right, proceed. A. Denton and I then came back and saw Hogencamp, and explained to him that Denton, by making his note for $6,000 and pledging this security—

Q. By "security" you mean the 50 shares of stock? A. The 50 shares of stock which we had received from Mr. Hogencamp—that there would be coming to him, after the payment of all of this, a surplus of $3,783.33.

Q. Coming to whom? A. Coming to Denton, —out of the $6,000.

Q. All right. A. And we asked him would he consent to it. He says "You bring me the money that is coming, the thirty-seven hundred and eighty odd dollars, over to me," he says, "and it will go, and then we will take care of the note when it comes due."

Q. Then it was not any part of the arrangement with McKelvey that the note should be paid at that time,—only the check that had not been paid was to be paid at that time? A. Yes, the note and check was to be paid, but not the $6,000 note. In order to get McKelvey—

Q. Please do not go over it again, you will mix it up worse. I understand it until you caused me not to understand it. Go ahead, proceed. A. So he said "Go ahead and make the arrangement with McKelvey." On the 15th of August, 1901,

Denton and myself went to McKelvey's office, 66 Broadway, and gave Denton's three months' note for $6,000, and it was dated August 12th, 1901, and gave 50 shares of the Second National Bank of Jersey City as collateral. McKelvey then took out $1,005 to take up the check due July 25, 1901, made by Henry M. Denton on the Second National Bank, $1,000 to take up a note of Denton's which would be due on the 20th of August, 1901—

Q. That is just what I asked you a minute ago, and you said "No." I just asked you a minute ago whether it was not the understanding between you and Mr. McKelvey that out of this $6,000 he was to take up not only the check but the note, and you said "No, sir; only the check," and then you explained to us that Hogencamp said you would only take up the check and take care of the note later. A. No, the note we were making, the $6,000 note, I referred to.

Q. Oh, no one suggested that McKelvey was going to require you to take up a $6,000 note which had not been obtained at the time McKelvey was talking to you; there was not any $6,000 note in existence at the time you talked first to McKelvey. McKelvey then had Denton's check for $1,005, he also had Denton's note for a thousand dollars, which was not yet due— A. That is right, sir.

Q. And he said to you, when you took him this 50 shares of Bank stock, "If Denton will give me a note for $6,000 and this 50 shares of Bank stock, I can go to the Chase Bank and get $6,000; out of that I will take the $1,005 and protest fees that are due on this check, and the $1,000 note that is not yet due me but will be in a short time, and $200 of a bonus for getting you this cash, and I will turn the balance over to Mr. Denton." Is not that correct? A. That is correct.

Q. Now, when you went to Hogencamp with this suggestion he said, "Provided I get that balance you can take the stock and go ahead and do that thing,"—is that correct? A. That is correct.

Q. Now, you did that thing? A. We did that.

Q. And brought back to Mr. Hogencamp a check for how much? A. A check for $3,783.33.

By Mr. Carey:

Q. Did Mr. Hogencamp, at that time, require any security in connection with this matter? A. Yes, sir; he required that we should give him a mortgage of $7,500 on one of the pieces of property that Denton was interested in.

Q. And was that done? A. Yes, sir. On August 16th I drew three bonds and mortgages, made by William H. Redfield to William Hogencamp. Of the three mortgages one was for $7,500 on the northwest corner—

Mr. Lane: I object to this, unless the mortgages are produced.

The Vice Chancellor: I overrule the objection. I do not know that a man has to produce a mortgage merely because he said he drew it.

A. (Resuming)—of 146th Street and Seventh Avenue. This was given as collateral and as security for the 50 shares of stock.

The Vice Chancellor: Now, Mr. Lane, if you now want to make your objection apply to the latter part of the answer in which he says that the mortgage came into existence as a paper having legal virility, I will hear you. But your objection, when interposed, was purely that a lawyer could not state that he drew a paper.

MR. LANE: I move to strike out so much as gives the contents of that paper writing.

THE VICE CHANCELLOR: I overrule that, because when he stated what you call the "contents" he was only stating what he had drawn. In the next breath it might have appeared that he threw them in the waste basket. He had a perfect right to testify to the physical act that he did, namely that he drew this mortgage. Now, the only time the rule that you invoke is operative is where a paper is relied upon as effective in some way. Now, he did afterwards say that Hogencamp got as collateral (I do not see how it could have been collateral, but he said that)—that Hogencamp got as security that he would get his stock back the $7,500 mortgage in question. Now, I want to give you your rights in the matter, and I will entertain a motion to strike out that part of the answer which relates to what Mr. Hogencamp got in the way of a written paper.

MR. LANE: I move to strike out that part of the answer which relates to what Mr. Hogencamp got as the contents of a written paper, on the ground that it does call for the contents of a written paper; and I move to strike out the testimony that he drew the mortgage, on the ground that it is immaterial and irrelevant.

THE VICE CHANCELLOR: I overrule the latter part of the objection, and I will hear Mr. Carey as to the first part.

MR. CAREY: So far as the production of the instrument is concerned in this case, we have the instrument.

THE VICE CHANCELLOR: You have it?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: Well, produce it, then.

(Mr. Carey produces a paper which he exhibits to the witness).

MR. CAREY: I want to say to the Court that this is a record of a public office in the City of New York, and is produced here, so I do not want it retained here.

THE VICE CHANCELLOR: All right; we never retain those exhibits, anyhow.

Q. Is this the mortgage that you have just referred to? A. That is the mortgage I have just referred to.

Q. The original mortgage? A. The original mortgage.

MR. CAREY: I offer the paper in evidence.

BY THE VICE CHANCELLOR:

Q. Where does that original come from? A. From the Register's Office of the County of New York.

Q. It is filed there? A. It is filed there.

Q. And it is here in the custody of someone from that office? A. Yes, sir.

Q. And, of course, under the laws of New York, presumably that will always remain at that office, subject to public inspection? A. Yes, sir.

THE VICE CHANCELLOR: I will not mark this paper, then, I will simply have it referred to, and will admit the offer of the evidence, and will say to counsel for the defendants that they may substitute, for the use of the Court of Errors and Appeals, or of this Court, if necessary, an exemplified

copy of this bond and mortgage, exemplified under the Act of Congress. You may substitute that for this exhibit. This exhibit will not be marked and will not be retained by me; it may be inspected by Mr. Lane as it is now, who may cross examine upon it now as to whether or not that is the paper it purports to be, etc.

By Mr. Lane:

Q. Was there a bond accompanying this mortgage? A. Yes, sir.

Q. Have you that here, too? A. Mr. Hogencamp has got that.

Q. I call your attention to the words on the back of this "R and R," as I read them, "Thos. O'Callaghan, 135 Broadway, N. Y.,"—is that your handwriting? A. Yes, sir. "R and R" means "Record and return to Thomas O'Callaghan, 135 Broadway, New York."

Q. And that was recorded at your request and returned to you? A. Yes, sir.

Q. For Mr. Hogencamp? A. Yes, sir.

Q. How did it get back to the Register's Office after it was returned to you? A. The laws of the State of New York require that where a satisfaction piece of a mortgage is filed, after 1905, you must produce the original mortgage and submit the original mortgage as well as the satisfaction piece, in order to cancel a mortgage of record.

Q. Did you have this mortgage cancelled of record? A. I did not.

By The Vice Chancellor:

Q. And it was not done under your direction? A. No, sir.

THE VICE CHANCELLOR: Is there anything further, Mr. Lane?

MR. LANE: No, sir.

THE VICE CHANCELLOR: Have you any objection?

MR. LANE: No, sir.

THE VICE CHANCELLOR: The paper is admitted. This exhibit is as follows: It is a mortgage dated the 15th day of August, 1901, between William H. Redfield of Jersey City, Hudson County, New Jersey, and William Hogencamp of Deal, in the County of Monmouth. It recites that Redfield is indebted to Hogencamp in the sum of $7,500, secured to be paid by Redfield's bond for that sum, on demand, with interest thereon from the date thereof at the rate of six per cent. per annum, payable semi-annually on the 15th days of February and August in each year thereafter until the said principal sum is fully paid. The property is described as in the City, County and State of New York, at the corner formed by the intersection of the northerly side of 146th Street with the westerly side of Seventh Avenue. It contains the usual printed clauses of a mortgage, and is signed William H. Redfield; and is acknowledged on the 15th day of August, 1901. It is stamped by the Register of the County of New York as having been recorded in his office on the 21st day of August, 1901, in Block Series Mortgages, Section 7, Liber 128, page 367, and indexed under Block Number 2032 on the Land Map of the City of New York. Across the face of the signature of Redfield is the impression of a rubber stamp

making the word "Cancelled"; and on the back is the impression of another rubber stamp containing the word "Discharged." The exemplified copy of this mortgage, if necessary to be used, will be marked by this Court "G. W. B., 1."

Q. Proceed. A. On the same day I also drew another mortgage with a bond from William H. Redfield for $7,500, on the southwest corner of 119th Street and Seventh Avenue; and also another bond and mortgage for $5,000 on the property on the south side of 127th Street just west of Columbus Avenue; making three mortgages and bonds.

By Mr. Carey:

Q. Were those bonds and mortgages executed? A. They were executed.

Q. By whom? A. William H. Redfield.

Q. And what did you do with the other two bonds and mortgages to which you have just referred?

Mr. Lane: I object to that.

The Vice Chancellor: I overrule the objection; it is just as to what he did with it.

A. I spoke to Mr. Hogencamp, and explained to him that in order to be safe he should have them filed in the Register's Office and recorded, at least, recorded in the Register's Office. He then instructed me to record these three mortgages, which I did do.

Mr. Lane: I move to strike out the contents of the paper.

The Vice Chancellor: They may be going to be produced. I cannot entertain that

motion yet. (To Mr. Carey). Do you intend to produce the papers?

MR. CAREY: We will not produce those. We have given notice to Mr. Hogencamp.

THE VICE CHANCELLOR: Were they not recorded?

MR. CAREY: The evidence of the witness will be that they were subsequently delivered to Mr. Hogencamp after recording them, and we have given Mr. Hogencamp notice to produce them.

MR. LANE: We haven't them.

THE VICE CHANCELLOR: Do you deny you ever had them?

MR. LANE: We deny that we have them now.

THE VICE CHANCELLOR: You have not shown that they are destroyed. You have not shown any right to give secondary evidence as to the contents of these papers, Mr. Carey.

Q. Did you say that you sent those to the Register's Office for recording? A. Yes, sir.

Q. Did you subsequently receive them back? A. (Referring to a book produced by the witness). On the 27th of August, 1901, I received them back.

Q. And what did you do with them after receiving them? A. Delivered them to William Hogencamp.

Q. At what time? A. Some time after the 27th of August and prior to the 24th of September, 1901.

MR. LANE: May I cross examine him

upon that book he has been asked to refresh his recollection from?

THE VICE CHANCELLOR: Yes.

BY MR. LANE:

Q. What book did you use then to refresh your recollection? A. My letter book.

Q. And how does that refresh your recollection? A. Because he paid me the bill for recording to counsel the portion of the book in question).

Q. Let me see the portion of the book which refreshes your recollection? A. Yes, sir (exhibiting to counsel the portion of the book in

Q. What is the date? There is no date on that bill, is there? A. Well, there was three papers together. This (indicating) is the bill, and this (indicating) is the memorandum of items, you see, That is the reason I say I could not give you the date. That (indicating) is the memorandum of just what it was, and this (indicating) is a detailed statement of what each item cost, don't you see; and here (indicating) is the letter thanking him for the check, and this (indicating) was receipted.

Q. That is on page 225 of this book? A. 224, 225 and 226.

BY THE VICE CHANCELLOR:

Q. Has the Letter Book any number? How do you designate it? Has it some year or date? A. From March, 1901 to August 13, 1902.

BY MR. CAREY:

Q. Have you seen the last two bonds and mortgages concerning which you have testified since delivering them to Mr. Hogencamp? A. No, sir.

MR. CAREY: I call upon the defendant Hogencamp to produce the bonds and mortgages inquired about.

MR. LANE: We haven't any such bonds and mortgages. If we ever had them, they have been cancelled and delivered up to the persons who delivered them to us.

10 THE VICE CHANCELLOR: The question s now, whether or not this witness's testimony about these four papers, the two bonds and two mortgages he has most recently spoken of, the $7,500 mortgage on the southwest corner of 119th Street and Seventh Avenue, and the $5,000 mortgage on 127th Street near Columbus Avenue, should be permitted to stand in view of Mr. Lane's objection that the papers must
20 be produced. I do not know that there is any great virility in that objection, but I will do this: I will permit you to produce exemplified copies from the Register's Office of New York of the two mortgages last mentioned, Mr. Carey, and if you fail to do so, Mr. Lane may renew his motion to strike all this evidence out. If it is material and important I think it will perhaps
30 be much better to have these papers—I mean copies of these two mortgages—here, and you may produce them, and I will admit them in evidence.

MR. LANE: I have no objection to their coming in evidence if they appear to have been recorded. My real objection is to his talking about them when the record of them may show what was done with them.

40 THE VICE CHANCELLOR: Yes, but if they are recorded copies may be produced; if

they were not recorded then I am inclined to think the evidence should—

THE WITNESS: They were recorded.

THE VICE CHANCELLOR: Then, unless you produce and offer sometime in evidence the record of these two bonds and mortgages just spoken of, Mr. Carey, I shall allow Mr. Lane's motion to strike out the oral testimony concerning their contents.

MR. CAREY: I would like to ask Mr. Lane now if he will be satisfied with a certified copy, certified by the official, instead of an exemplification?

MR. LANE: I am satisfied with anything that shows when they were cancelled or satisfied of record; that is all I care about.

THE VICE CHANCELLOR: Mr. Lane stipulates that he will not make any objection based upon the lack of the exemplification, if the papers are duly certified by the Register in New York; is that correct, Mr. Lane?

MR. LANE: Yes, sir.

THE VICE CHANCELLOR: When produced, such certified copies will be marked as follows: The $7500 mortgage, G. W. B, 2, and the $5,000 mortgage, G. W. B, 3.

Q. I show you what purports to be a satisfaction of mortgage, William Hogencamp to William H. Redfield, dated May 29, 1902, and ask you if that is a satisfaction of one of the mortgages concerning which you have just testified? A. Yes, sir; this is the satisfaction of the mortgage on 119th Street and Seventh Avenue.

Q. For how much? A. For $7500.

MR. CAREY: I offer that satisfaction in evidence.

BY THE VICE CHANCELLOR:

Q. That is from a custodian of the Register's Office in New York? A. Yes, sir.

Q. Where it is filed for record? A. Yes, sir.

Q. And remains a permanent record there, does it? A. Yes, sir.

THE VICE CHANCELLOR: I will admit this in evidence, and will require you to produce a certified copy for our use, Mr. Carey, which certified copy will be marked, when produced, G. W. B, 4.

BY MR. LANE:

Q. The signature of the witness Henry M. Denton, is that the signature of Henry M. Denton? A. Yes, sir.

THE VICE CHANCELLOR: By stipulation between counsel there will be no necessity for producing a certified copy of this satisfaction, as the Court will read this exhibit on the record. There will not, therefore, be any G. W. B, 4. The paper reads as follows:

STATE OF NEW YORK, }
City and County of New York. } ss.:

"I, William Hogencamp, do hereby certify that a certain indenture of mortgage bearing date the fifteenth day of August in the year One thousand nine hundred and one, made and executed by William H. Redfield of Jersey City, Hudson County, New Jersey, to William Hogencamp of Deal, County of Monmouth and State of New Jersey, to secure the payment of Seventy-five hundred

dollars and duly recorded in the office of the Register of the County of New York in Liber 127, §7 of Mortgages, page 345, on the 21 day of August in the year One thousand nine hundred and one at one o'clock 39 minutes in the afternoon is paid, and I do hereby consent that the same be discharged of record.

Dated, the 29th day of May, 1902.

WILLIAM HOGENCAMP.

(Seal.)

Signed in the presence of Henry M. Denton."

On the back is a certificate of a Commissioner of Deeds of New York City, A. H. Ryan, of the appearance before him of Henry M. Denton on the 29th day of May, and the proof by said Denton of his acquaintance with Hogencamp, and of the fact that he, Hogencamp, executed the within instrument, and that Denton, the subscribing witness, saw him execute it, and that he then subscribed his name as witness.

BY MR. LANE:

Q. How do you know this is the satisfaction of the 119th St. and Seventh Avenue mortgage?

Question withdrawn.

Q. There is nothing on this paper to indicate of what mortgage this is a satisfaction, is there? A. On that paper?

Q. Yes, the section and page of record? A. The section, Liber and page of record.

Q. Well, that is all there is on that paper to indicate what that is a satisfaction of? A. That is all.

BY THE VICE CHANCELLOR:

Q. It does sufficiently appear from what is on

this paper that this is not a satisfaction of G. W. B, 1, which is the $7500 mortgage on the property on the corner of 146 Street and Seventh Avenue, does it not? A. Yes, sir.

Q. Because that mortgage was recorded in a different place, in a different book, page and number, &c? A. In a different Liber.

MR. LANE: I object to the offer of this paper until and unless the record of the mortgage which it satisfied is produced.

THE VICE CHANCELLOR: I overrule that. Where a defendant, over his own signature, states that he had a mortgage of a certain character and cancelled it, I do not know that the burden is on the other side to prove anything more than that he executed that paper. The burden may be upon you to prove anything that is outside of that paper. You may proceed, Mr. Carey.

BY MR. CAREY:

Q. Now, Mr. O'Callaghan, at the time you drew those three bonds and mortgages, concerning which you have testified, did you draw any other papers between Mr. Redfield and Mr. Hogencamp? A. No, not that day.

Q. When did you next draw some paper in connection with Mr. Denton's properties in New York? A. The next paper was the assignment, or attending to the drawing of the assignment of the Rose Flanagan judgment and assignment of mortgage, which was on the 22d day of August, 1901.

Q. Now, between the date when you drew the three bonds and mortgages and that time did you draw any other assignment of mortgage to Mr. Hogencamp? A. No, sir.

Q. Do you recall drawing an assignment of mortgage to Mr. Hogencamp, the mortgage being for $24,000? A. Yes, sir; that was drawn on the 27th day of August, 1901.

Q. Drawn on that day? A. Yes, sir—no, it was recorded on that day.

Q. Will you consult your memorandum and see when that was drawn? A. (Referring to memorandum). It was drawn on either the 25th or 26th of August, 1901.

Q. Now, will you state what led up to the drawing of that assignment of mortgage? First. State what the mortgage was.

MR. LANE: I object to that, on the ground that it calls for the contents of a written document. It has already been testified that it has been delivered and recorded.

THE VICE CHANCELLOR: Why is not that so, Mr. Carey?

MR. CAREY: Then I call on the defendant, Hogencamp, to produce it.

THE VICE CHANCELLOR: What is it you call on him to produce?

MR. CAREY: The bond and mortgage for $24,000 made by William H. Redfield to Robert Shaw, and assigned by Shaw to William Hogencamp.

MR. LANE: The answer is that the defendant, Hogencamp, has not the paper; that it was delivered to Mr. Shaw, and is presumably cancelled of record.

THE VICE CHANCELLOR: That seems to admit that Mr. Hogencamp had the paper called a bond and mortgage of this description. Under those circumstances I do not

think it is necessary to require the paper to be produced. There does not seem to be any question that there was such a paper in existence, and its contents are not material. I will overrule the objection, in view of the answer to the call. You may proceed.

Q. Mr. O'Callaghan, did you see this bond and mortgage, William H. Redfield to Robert L. Shaw, for $24,000? A. I did, sir.

Q. Who brought it to you? A. I drew it first.

Q. At whose direction did you draw it? A. Henry M. Denton's.

Q. And did you have any conversation with Mr. Hogencamp in regard to this mortgage?

THE VICE CHANCELLOR: When? Do you mean recently, or when?

Q. At or about the time when you drew it? A. Yes, sir.

Q. State what that conversation was? A. He asked me what we had done with the property, or what Denton had done with the property he had gotten from the Metropolitan Life, whether he had put any mortgages on it.

Q. Was that the property covered by this mortgage? A. Yes.

BY THE VICE CHANCELLOR:

Q. Were those the four pieces that you spoke of? A. Yes, sir.

BY MR. CAREY:

Q. And what did you reply? A. I told him, yes, that there was a mortgage of $24,00 made by Redfield to Shaw, covering those four pieces of property.

Q. Go on, state the conversation. A. "Well," he says, "what are you going to do with that"? I says "I ain't going to do nothing with it."

Q. Well, go on. A. He says, "Well," (turning to Denton who was there), "Henry, what is the matter of my getting an assignment of that?" I said "You might as well give him everything; you are doing it right straight along. You have given him all the proceeds of the property, you might as well give him this mortgage, too, and let him eat you up entirely."

Q. Proceed; never mind these details which are not important in the case; go ahead and tell what happened with the instrument? A. Then Hogencamp said "Draw me an assignment of that mortgage." I says, "I will if Denton says so."

Q. Go on. A. And Denton says "Well, I will see Shaw about it; but, of course, you know we will have to draw the assignment to him." This was all in the presence of Hogencamp. I said "All right, we will draw the assignment." I drew up an assignment of that mortgage to Hogencamp from Robert L. Shaw.

Q. Was the assignment executed? A. It was.

Q. And what did you do then with the mortgage and assignment? A. I drew the assignment of the mortgage. I recorded the original mortgage on or about the 28th of August, 1901. I did not file the assignment from Shaw to Hogencamp until some time later. The reason of that was the assignment from Shaw to Hogencamp required the Liber and page in which the mortgage was recorded in the Register's Office. But I wrote Mr. Hogencamp a letter on the 27th of August, 1901, in which I called his attention to having received the mortgages from Redfield to Shaw, and

stating that I would record the mortgage the following day, but would not file the assignment until I could get the Liber and page in which the mortgage was recorded, and asked him if that met with his approval. That letter I mailed to William Hogencamp on the 27th of August, 1901.

Q. Go on; tell what happened to the bond, mortgage and assignment? A. I filed the mortgage,—

Q. Well, you have said that already; now, go on. A. And then filed the assignment. After filing the assignment I sent a bill to Mr. Hogencamp, and he sent me a check for the bill.

MR. CAREY: I call upon the defendant Hogencamp for the production of that bill.

MR. LANE: We have no such bill.

MR. CAREY: I call on the defendant Hogencamp to produce the check which paid the bill.

MR. LANE: We have no such bill, and no such check. We have a check that paid a bill from Mr. O'Callaghan.

MR. CAREY: Let me see the check.

A check is now produced by Mr. Lane, being the check heretofore marked Exhibit 11, N, signed W. Hogencamp, to the order of Thomas O'Callaghan, Jr., for $53.88, dated September 27, 1901, and the same is exhibited to the witness by Mr. Carey.

Q. Is that the check which paid your bill which you rendered in this matter? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. What is the date of your bill? A. I cannot give you that, if your Honor please (referring to the copy of the bill in the witness's letter press

copy book). It is kind of blurred here; I cannot give you the exact date of it at all. I can give you the dates between, but I couldn't give you the exact date.

By Mr. Carey:

Q. Now, did you receive this mortgage and assignment back from record? A. Yes, sir.

Q. Do you know what you did with them after receiving them back from record?

The Vice Chancellor: Answer yes, or no, that you do know, or you don't know.

A. Yes, sir.

Q. What did you do with them? A. The mortgage I returned personally to Mr. Hogencamp, and the assignment I mailed to him on October 16, 1901.

Q. Have you ever seen those instruments since that time—that is, since the time of mailing and delivering them to Mr. Hogencamp? A. No, sir.

By The Vice Chancellor:

Q. Now, is that the mortgage, Mr. O'Callaghan, which was subsequently foreclosed and Peter Olney as Referee sold in four parcels and the money was received by Mr. Hogencamp, that Mr. Vredenburgh cross-examined him at great length about the other day? A. No, sir; that mortgage was a mortgage that I had assigned from Denton to Hogencamp on the 68th Street property. This mortgage was on 62 Grand Street.

Q. This $24,000 mortgage that we have just spoken about was on 62 Grand Street, was it? A. 62 Grand Street, 76 Convent Avenue, 15th Street near 8th Avenue, and right off the corner of 71st Street and West End Avenue.

Q. Now, the four pieces that Mr. Vredenburgh cross-examined Mr. Hogencamp about receiving the proceeds of the sale of at the foreclosure sale were at 68th Street and West End Avenue, were they? A. Yes, sir.

BY MR. CAREY:

Q. Did you, by your check, pay any money to Mr. Hogencamp? A. Yes, sir.

Q. Have you the checks by which you paid money to him? A. Yes, sir.

Q. Produce them, please.

THE VICE CHANCELLOR: It is already in evidence. They are already marked J. B. V, 15, Check No. a, 2849, of Thomas O'Callaghan, Jr., dated the 17th of July, 1901, on the Colonial Bank of New York, to Wm. Hogencamp, endorsed Wm. Hogencamp, and a check dated August 6th, 1901, from the same to the same for $2500, marked J. B. V, 16.

MR. CAREY: If your Honor please, you ruled those two checks out.

THE VICE CHANCELLOR: On what ground?

MR. CAREY: As I recall it, on the ground that there was no evidence that this money came from property in which Mr. Denton was interested.

MR. LANE: That is right.

THE VICE CHANCELLOR: All right; you may proceed.

Q. You have those checks? A. Yes, sir. (The witness produces three checks, being the two already marked for identification J. B. V., 15 and J. B. V, 16, and a third check not heretofore

marked and which Mr. Carey examines the witness upon as follows):

Q. The check which has not been marked,—is that your signature? A. Yes, sir.

Q. And to whom was that delivered? A. William Hogencamp.

Q. To whom were J. B. V, 15 and J. B. V, 16 delivered? A. William Hogencamp.

Q. And were they paid by your bank? A. They certainly were.

Q. Do you know Mr. Hogencamp's signature? A. I do.

Q. See if those checks are endorsed by Mr. Hogencamp? A. They are, sir.

Q. And paid through your bank? A. Yes, sir; paid by my bank.

Q. Do you know what those checks were given to Mr. Hogencamp for? A. Moneys that came out of Denton's property.

Q. All three of them? A. They certainly were. It strikes me, though, that this $2500 check, J. B. V, 16, was a payment of the balance of the $14,000 mortgage which Hogencamp had on the Beard Building; that we only gave him $11,500 that day, and this $2500 made up that money which he was to get on that day.

MR. CAREY: I offer those checks in evidence.

MR. LANE: I have no objection to the $2500 one.

THE VICE CHANCELLOR: All right; J. B. V, 16 is now admitted in evidence. What have you to say about J. B. V, 15, dated the 17th of July, 1901, for $250, the check being that of O'Callaghan to the order of Hogencamp, endorsed by Hogencamp?

MR. LANE: I would like to cross-examine on it.

BY MR. LANE:

Q. How do you know that this check, J. B. V, 15, came from Denton's property? A. Because that is the only place he would get any money from me from.

Q. Is that the only way you have of knowing? A. That is the only way I have of knowing.

Q. Have you a cash book in your office? A. No, sir.

Q. Any memorandum of the receipt of moneys? A. Not that I can find, of this date.

Q. Does your diary show anything? A. Yes. Prior to the 15th of July suit was commenced against Henry M. Denton by Wells, Newton & Company by Judge Ernest Hall, and I had gone to him and begged of him for time. That was on the 13th of July—

BY THE VICE CHANCELLOR:

Q. That you went to ask for the time? A. To ask for the time; and I gave him a check for $250 which was to be used with Wells, Newton & Company not to enter the judgment against Denton, but to give us a certain specified time in which to turn ourselves. Wells, Newton & Company and Judge Hall refused to give us time, and on the 15th of July, 1901, there appeared in the Law Journal (that is our legal paper in New York) a judgment against Denton for the amount of that suit; and that same day I received back from Judge Hall a check for $250, and that is what this $250 represents.

BY MR. LANE:

Q. Is it in there (referring to the witness's

memorandum). Would it not naturally follow there, from your having returned that check? A. Hogencamp had an engagement at my office on July 17th, the same day as the date of this check, and I delivered this check personally to him, and that is the reason it is not here.

By Thy Vice Chancellor:

Q. You mean that is the reason you did not make any other memorandum in your book? A. That is the reason there wasn't any other memorandum made in the book.

Q. Let me see if I understand: This check was the direct result of a check that you had received from Ernest Hall; that Ernest Hall check was to represent money which you had paid over to Mr. Hall, who was the attorney for Wells, Newton & Company, to endeavor to get them to adjourn a case that they had against Denton, and when they refused to adjourn the case they sent the $250 back to you through Mr. Hall, and you then sent that $250 to Mr. Hogencamp? A. Yes, sir.

Q. And it was either Mr. Denton's money or Mr. Hogencamp's money was it—either Denton's check or Hogencamp's check that you originally had? A. Yes, sir.

By Mr. Lane:

Q. You don't know which? A. I don't know which.

Mr. Lane: I object to it, on the ground that it is not shown to be Denton's money.

The Vice Chancellor: I shall overrule that objection and admit the check.

Q. Now, whose money was that (showing the witness check now marked G. W. B, 4, which is a check on the Colonial Bank of New York, dated

the 25th of June, 1901, signed Thomas O'Callaghan, Jr., to the order of William Hogencamp, for $65.41, endorsed by Hogencamp)? A. That $65.41 was the interest on a mortgage of $14,000 given to Hogencamp on the Beard Building on the 20th of March, 1901.

MR. LANE: I have no objection to that check.

THE VICE CHANCELLOR: That may be admitted and will retain its original marking, G. W. B, 4.

BY MR. CAREY:

Q. Turn to your memorandum of August 5th, 1901? A. I have done so.

Q. Now, will you state in detail what moneys passed to Mr. Hogencamp on that date, and from what transaction? A. There was $11,500, either in cash or certified checks, from the Robinsons to Hogencamp in payment of the $14,000 mortgage.

BY THE VICE CHANCELLOR:

Q. That is the Beard Building mortgage? A. Yes, sir; and there was $2500, the balance of the $14,000, which was paid by my check, J. B. V, 16, dated August 6, 1901, for $2500.

BY MR. CAREY:

Q. And how much did Mr. Hogencamp get on that day, all together?

THE VICE CHANCELLOR: He got $11,500 one day and $2500 the next. Why make him say it all over again. He has just said it, haven't you, Mr. O'Callaghan?

THE WITNESS: Yes, sir.

Q. Is there any other item there under that date of August 5th? A. No, sir.

Q. Did Mr. Hogencamp get anything out of that transaction beside the cash payments which you have testified to? A. That is only on the mortgage—this is where that $14,000 mortgage was paid off.

THE VICE CHANCELLOR: We have already had the testimony as to what happened when the property was bought and sold, haven't we, Mr. O'Callaghan?

THE WITNESS: Yes, sir.

THE VICE CHANCELLOR: Now you have got when the property was bought, when it was sold, and when the mortgage was paid off. There was some cash came to him when the property was bought, and something he paid in the way of cash.

THE WITNESS: That is right.

Q. On the closing of titles to porperty in New York in which Mr. Denton was interested, can you state whether or not Mr. Hogencamp attended? A. Whenever the titles were closed during the year 1901, that I attended, Mr. Hogencamp was present and took the proceeds of all that came from the properties.

Q. And were you present at any negotiations, or conversations, rather between Mr. Denton and Mr. Hogencamp relative to the sales of property in New York? A. Why, yes; because Mr. Denton would never sell a piece of property until Mr. Hogencamp, Denton and myself would talk it over.

Q. Who determined finally whether property was to be sold, or not? A. Hogencamp.

Q. What properties did you attend the closing of the title of, can you state? And give the years also, so far as you can? A. The Beard Building,

on two sales in 1901; and the 79th St. and Amsterdam property in 1901.

By The Vice Chancellor:

Q. Go on; he wants you to go right along. A. I can't go any longer; they wouldn't let me after that; Hogencamp threw me out.

Q. Then that is all you attended—those two sales? A. Those three sales.

Q. You mean two with respect to the Beard Building, and one with respect to 79th Street? A. Yes, sir.

By Mr. Carey:

Q. Did Mr. Hogencamp state the reason why he would not allow you to be retained after that? A. Yes, because I took a thousand dollars that belonged to me for services he said he wouldn't let me ever have anything more to do with it, and refused to let me go on with the business.

Q. Is that the thousand dollars Mr. Hogencamp referred to in his testimony? A. Yes, sir.

Q. And did Mr. Hogencamp know of that at the time? A. Why, the conversation was at the Second National Bank about in the month of August, 1901. I met Mr. Hogencamp and Mr. Denton in the office. I told Hogencamp I had got possession of a check with Redfield's endorsement, and that I had put it to my account in the bank, and I was ready to give him a check for so much money, which was a thousand dollars less than what I had received; he said he wouldn't take the check; I said "Why not?" "Well", he says, "I want the other $1,000." "Well," I says "you can't have it; I have been working for Denton for close on to a year, and I haven't been paid anything for my services, and I am going

to take out this money, I want it, I am entitled to it, and I propose to have it." "Well, Denton has nothing to do with it; I have got all to do with it"; and I said "Yes, that is the reason I am here now, to have it out with you. You don't think I am going to sit and work day and night for Denton and Denton's properties and let you come in and have the proceeds and tell me to go fish for my money? I want my money, and I have got it, and I am going to keep it. Now, if you want this check you may have it; if you don't, I will place it in the Chamberlain's hands in the City of New York, and you can go and get it." Then he threatened he would have me arrested. I told him that was cowardly to do that because I was in Jersey, but if he wanted me arrested he should come over to New York, that there is where the stealing was done, if there was any stealing. "Well," he says "give me the check." I said "you had better take it," and he took the check, and from that time he would not come near my office, or would not allow me to have any talk about any of Denton's property, and Denton never came to me about the sale of any of his properties after that.

CROSS EXAMINATION BY MR. LANE:

Q. Mr. O'Callaghan, referring to the property that you stated that Mr. Hogencamp received fifteen thousand and some odd dollars from—what property was that? A. The Beard Building.

BY THE VICE CHANCELLOR:

Q. At the time of its acquisition? A. Yes, sir.

BY MR. LANE:

Q. How do you know it was $15,654.47? A. Because I was present and made figures.

Q. You do not remember those figures to this day, do you? A. Oh, Lord, no.

THE VICE CHANCELLOR: He says he testified by reference to a memorandum that he used in reference to it.

Q. Will you produce the memorandum which you used. A. (The witness hands to cross-examining counsel the memorandum which he used when testifying).

Q. This memorandum shows what? A. It shows that the purchase price of the Beard Building was put in at $600,000, and the purchase price of the 20th Street Building at $450,000, making a difference of $150,000; the supplies that were on hand in the Beard Building were $452.20 on that day. The rents of the 20th Street building were $708.33. The Metropolitan Life loaned back on Redfield's bond on the Beard Building $450,000. There was advanced $350,000 on the Manhattan Life Building. When I say "Manhattan Life Building" I mean the 20th Street Building.

BY THE VICE CHANCELLOR:

Q. That belonged to the Manhattan Life? A. No, the Manhattan Life held the first mortgage of Two hundred and eighty odd thousand dollars on that property. So that on the 20th of March we had to pay to the Manhattan Life $282,767.50 to satisfy the mortgage that was then outstanding on the 20th Street Building. We had to pay for sundries or supplies on the Beard Building $452.20, and the rents of $708.33. Then there was Rich, Woodford, Bovie & Wallace—they represented the Metropolitan Life, and the Metropolitan Life's charge was $417.50 for attorney's fees on the $450,000 mortgage. That left a balance to William H. Redfield, out of the $450,000 mort-

gage, of $15,654.47. The word "endorsed" appears thereafter (referring to the memorandum); that means that Redfield endorsed the check—whether it was the Metropolitan Life's or the attorneys' check, I don't know—and Mr. Hogencamp took it away with him.

Q. That does not mean that Hogencamp took it away with him, does it (referring to the word "endorsed" on the memorandum)? A. The word "endorsed" tells me that Hogencamp was present and took the check, that Redfield endorsed the check. I wanted to get hold of the check, and he took it, because I didn't get hold of it.

Q. How does the word "endorsed" on that paper signify to you that Mr. Hogencamp was present, and that he, Hogencamp, took the check? A. It means that Redfield endorsed the check right there and then at that time.

Q. Well, that is all it means, doesn't it? A. And from my remembrance and recollection of the facts, Mr. Hogencamp was present and took the money.

Q. You don't mean "took the money"? A. Took the check.

MR. LANE: I ask that this memorandum be marked for identification.

The paper was marked T. O'C. Jr., 1.

Q. Where are your diary entries of that date? A. I haven't such in this book; my first entry in this book is June 13, 1901 (referring to the book produced by the witness).

Q. Have you the book? A. I don't believe I have.

Q. Have you looked for it? A. Oh, yes.

Q. Can't you find it? A. No.

Q. Where did you find this memorandum, T. O'C. Jr., 1? A. In Mr. Vredenburgh's office.

Q. How did it get to Mr. Vredenburgh's office? A. About three or four years ago Denton came over to find out if I had any papers, and I gave him that paper.

Q. Is that paper in your handwriting? A. It is, sir.

Q. All of it? A. Every bit of it.

By The Vice Chancellor:

Q. Was it made at the time of the settlement? A. It was made at the time of the closing of the title, except the words "Title Number 3800." That was put on subsequently.

By Mr. Lane:

Q. Have you any papers in your office bearing on this paper, other than this memorandum? A. Not that I can find.

Q. Have you tried to find them? A. Yes, sir.

Q. No scrap of paper in your office with respect to the transaction at all? A. None at all. There would not be any there except the contract; that would be the only paper that I would have.

Q. And you have no diary preceding June 13, 1901? A. Oh, yes, I have.

Q. Well, have you the one for March, 1901? A. I cannot find it.

Q. Well, that is the only one you cannot find? A. Oh, no.

Q. Which ones cannot you find? A. I cannot remember which ones I cannot find.

Q. Can you find the one preceding June 13, 1901? A. I cannot tell you that; all I can tell you is that the day book with the memorandums for March and April I cannot find.

Q. Now, you stated that Mr. Hogencamp at one time got a check for $14,000? A. A check or cash.

Q. When? A. I think the 25th of June, 1901.

Q. Turn to your diary entries on that date: Do you find anything there with reference to it? A. I find on the 25th of June there was a title closed at my office, of Redfield and Robinson.

By The Vice Chancellor:

Q. Is that the Beard Building? A. Yes, sir. When I testified to that $14,000 payment I had before me the contract between Redfield and Edward F. Robinson. Under the terms of that contract there was $500 paid on signing the contract, the balance, $14,500, on delivery of the deed.

By Mr. Lane:

Q. Well? A. There has evidently been a mistake.

Q. Where? A. In my statement. He did not get $14,000 on the 25th of June, because there was a mortgage on the Beard Building held by a man by the name of Coffin for $6,000 and some odd dollars; so that as a matter of fact he only received $5,500 on that day, plus the check for $65.41.

Q. Which you have already testified to was payment of interest? A. Yes, sir; and also $1084.62 he got on that day, besides the $5,500.00.

Q. Where is the $1,084.62? A. (The witness indicates an entry on the memorandum book).

Q. How does that show that Mr. Hogencamp got $1,084.62 on that day? A. It shows it because every title I closed at that time for Denton, or in which Denton was interested, Mr. Hogencamp got the money from.

Q. Was that cash or check (referring to the payment of the $1084.62)? A. I cannot tell you; that on the 25th of June he did not get fourteen and odd thousand dollars, he got $5,500 in cash I couldn't tell you whether it was cash or check So I desire to correct my testimony by saying or check, $1,084.62 in cash or check, and $65.41, which was by my check.

Q. Now, that sum of $5,500 that you are talking about now is the same $5,500 that you testified to in your direct examination, is it not? A. I don't know that I testified to it in my direct examination, but if I did that is what it was, on the 25th of June. That is the day he got it.

THE VICE CHANCELLOR: I do not remember the witness having testified to any payment of $5,500 heretofore. He testified about a $5,000 mortgage.

MR. LANE: My recollection is that he testified to a payment of $5,500.

THE VICE CHANCELLOR: Well, that is enough; he says now that if he testified to any payment of $5,500 on the 25th of June, 1901, it was this one he has spoken of.

Q. Why did you testify a few moments ago that Hogencamp had received $14,000 on that day? A. Because I had before me the contract between William H. Redfield and Edward F. Robinson for the exchange of the Beard Building for certain properties in the City of New York, and by the terms of that contract we were to get five hundred dollars in cash on the signing of the contract—my client was—and $14,500 on delivery of the deed.

MR. LANE: I offer that memorandum for identification.

The paper is marked for identification T. O'C. Jr., 2. It is a contract dated June 10th, 1901, between Redfield and Robinson for the exchange of the Beard Building for some other property.

BY THE VICE CHANCELLOR:

Q. This was the contract by which Denton acquired the Beard Building, was it? A. No, sir; sold the Beard Building.

BY MR. LANE:

Q. Had you looked at your diary entries before you so testified? A. I had not.

Q. You had not? A. No, sir.

Q. You did not look on page 9 of your diary entries before you came to court this morning? A. No, sir.

THE VICE CHANCELLOR: Do you mean ever?

MR. LANE: I mean with reference to the property in this case.

Q. You haven't? A. No, sir—oh, had I looked at it? Why, I certainly had, because I had it marked.

Q. Then you had looked at it before? A. Oh, yes, I looked this book up when I was told I was wanted, and wherever there was anything referring to Hogencamp and Denton I have got it marked here on the book.

Q. How do you know that Mr. Hogencamp got the $500 at the time of the acquisition of the Beard Building? A. Because I saw him take the check.

Q. Turn to your diary entries on that? A. I haven't got it.

BY THE VICE CHANCELLOR:

Q. That was March 20th, 1901, wasn't it—the time of the acquisition by Denton of the Beard Building was March 20th, 1901? A. Yes, sir; but that is not the time he is asking me about, it was the $500 he got from the Robinson contract on June 10th.

BY MR. LANE:

Q. Where was this contract signed (referring now to T. O'C. Jr., 2)? A. At my office, 135 Broadway.

Q. Who was present? A. Henry J. Hume, the real estate broker; Edward F. Robinson, Henry M. Denton, Mr. Hogencamp and myself.

Q. Do you know whether the $500 was given by check or in cash? A. That I could not tell you.

Q. And it is your present recollection, unassisted by this memorandum, that you saw Hogencamp get the $500, is that so? A. It is.

Q. Then you don't know anything about it except what is contained in this memorandum? A. I know there was $500 paid on that contract, and that Hogencamp got it.

Q. How do you know that Hogencamp got it? A. Because he was present and got it.

Q. Because he was present he got it? A. Yes, sir; he got it; that is just right; that is the only reason I have testified that way.

Q. That is the only reason you have testified that way? A. Absolutely the only reason.

Q. You testified about a trade that Denton made with respect to the Amsterdam Avenue property, and in which there was $2955.07 paid? A. Yes, sir.

Q. When was that? A. 2d of August, 1901.

Q. And where is that in your diary entries? A. The entry is under August 1st.

Q. Now, what does the entry show? A. "Attended at 79th Street title with Metropolitan Life Insurance. Attended at Foster's office with Smith, Denton, Hogencamp, Redfield, Scannell and Doherty. Spent three-quarters of day there in closing. Doherty executed papers, application, and bond and mortgage. Closing adjourned to August 2d at 11 A. M. Had Leslie M. Bliss approve and consent to the order of Doherty in Blodgett vs. Denton. O'Gorman promised to consent to later."

Q. When was the word "Hogencamp", written on the outside of the red line, written in there? A. Either the afternoon of the 1st of August, or the morning of the 2d of August.

Q. How was it that Hogencamp's name appeared where it does, outside of the regular order? A. I cannot tell you that; it is in the regular order, but outside—

Q. (Interrupting). Apparently written in after the writing had been done? A. It was evidently written in when I went over the list that the boy had, and I called his attention to it that Hogencamp was present, and he was not in there.

Q. Is that your handwriting? A. No, sir.

Q. None of this writing is in your handwriting? A. No, sir.

Q. None of the book is in your handwriting? A. Oh, I can't tell you that. This writing that I have been reading was all written by my clerk.

Q. Is that the only entry in the book on that date? A. On the first day; yes, sir.

Q. On the second day is there any entry? A.

There does not seem to be any on the second day. All we had to do on the second day was to bring the bond. The Metropolitan required a bond of a surety company to complete the building, and the bond was written up that afternoon and was delivered the next day, and the moneys were delivered accordingly, and the paper passed. They were all agreed on in the afternoon, but by reason of not having the bond ready on the 1st, it went over until the next morning.

Q. Apparently there has been a page torn out of this book, has there not? A. Yes, sir.

Q. Have you any recollection as to how that happened to be torn out? A. No, I don't know anything about it. There is the 3d and 4th of the month missing.

Q. Has that entry on the 5th with respect to Doherty, any reference to this particular matter? A. Yes.

Q. Now, what has that to do with it?

THE VICE CHANCELLOR: Do you want to go into that if it does not concern some money that he got?

MR. LANE: No, I want to know whether that refreshes his recollection at all with respect to this $2955.07?

THE VICE CHANCELLOR: Then ask him that, because otherwise it may be something that don't interest us a bit.

BY THE VICE CHANCELLOR:

Q. Has the item which appears in your Day Book under date of the 5th of August, 1901, on page 41, headed "Re Denton," and then something about Doherty, anything to do with this matter that you have been asked about concerning the

receipt, as you say, by Mr. Hogencamp of $2955.07? A. No, sir; except that Doherty was the man that made the mortgage on the 79th Street property, and was to complete it, and then out of that mortgage the $2955.07 came. He was the man to whose order the check was made.

By Mr. Lane:

Q. Then the only thing you have to refresh your recollection on this subject is this memorandum which you produced and that is marked T. O'C. 1? A. No, sir, the book and T. O'C. 1.

Q. How does that refresh your recollection that Hogencamp got the $2955.07? A. Because, as I said before, he came there and he got the money, because I took precaution on the 2d of August to take care of myself, and I got $700 out of that money on that day.

Q. Well, how does that refresh your recollection that Hogencamp was present on the 2d day of August? A. Oh, that alone don't refresh it.

Q. How do you know he was present on the 2d day of August? A. Because whenever there was a dollar of Denton's money to be paid he was present and got the money.

Q. And he was present when every contract was signed? A. During the year 1900, that I attended, yes.

Q. He was present every time mortgages were made? A. If they were made at the time of closing title, yes.

Q. And he was present every time title was closed? A. Every time title was closed.

Q. No matter how many days it took to close a title, he was on hand? A. It never took any more than one day to close a title.

Q. Now, it took more than one day to close this particular title, didn't it? A. No.

Q. You have Mr. Hogencamp over at the Metropolitan Life, according to your memorandum, on the 1st of August? A. I did not have him there at all.

Q. Well, you saw him there on the 1st? A. I saw him at Wall Street.

Q. Now, you testified that on the 2d of August he was at the same place? A. He came over the next day and got the check; that is all he came there for.

Q. That is the only reason why he came there, to get the check? A. That is all.

Q. Whose order was that check drawn to, do you know? A. Thomas F. Doherty's.

Q. And by whom was the check drawn? A. Oh, now, I can't tell you that,—either the Metropolitan Life or Rich, Woodford, Bovie & Wallace.

Q. And the only reason why you know Mr. Hogencamp got the check was because your memorandum shows that a check for that amount went for Denton's benefit on that day? A. That is exactly the reason.

Q. Now then, the mortgages that were executed for $7500,—were each one of those mortgages to secure the same thing? A. What do you mean by "secure the same thing"?

Q. Well, you testified that on the 16th day of August, 1901, there was a mortgage made for $7500 by Redfield to Hogencamp, and on the same day that there was another mortgage made by Redfield to Hogencamp for $7500? A. And on the same day another one for $5000?

Q. And on the same day another one for $5000? A. Yes.

Q. Now, you said they were delivered as collateral? A. No, I did not.

Q. What were they delivered for? A. There was one on the corner of 146th Street and 7th Avenue that was given as collateral, or security for the fifty shares of stock which I got, or Denton got in my presence, and was delivered to McKelvey.

Q. And what was the other one of $7500 delivered for? A. At the present time I cannot tell you.

Q. Well, will your memorandum help you out? A. No, because the memorandum is simply "3 bonds and mortgages."

Q. But you do recollect distinctly the one $7500 mortgage having been delivered as collateral? A. I do, because he told me he wanted it.

Q. Well, didn't he tell you something about the others? A. No.

Q. He did not tell you anything about the others? A. No.

Q. You, Denton and Hogencamp talked together at the Second National Bank and you got instructions with respect to drawing these three mortgages; he told you the reason why he wanted one of them, but he did not tell you the reason why he wanted the other two? A. There is no such statement by me, or never any such thing occurred.

Q. You went to the Second National Bank to get the stock, didn't you? A. I went to the Second National Bank to get the money.

Q. You got the stock at that time, didn't you? A. At that time.

Q. Didn't he give you instructions to draw the mortgages at that time? A. To draw the $7500

mortgage on 146th Street and Seventh Avenue, yes, sir.

Q. When did he give you instructions to draw the other $7500 mortgage? A. He never gave me the instructions.

Q. Who did give you the instructions? A. Henry M. Denton.

Q. Where did he give you the instructions? A. At my office, 135 Nassau Street.

Q. On what day? A. That I cannot tell you.

Q. Does your memorandum show? A. No, sir; it wouldn't show that.

Q. Who gave you the instruction to draw the $5,000 mortgage? A. Henry M. Denton.

Q. When? A. About that time.

Q. Well, wasn't it at the same time? A. No.

Q. They bear date the same date don't they? A. I know that; they were drawn the same day, but that is all.

Q. And you got your instructions with respect to them on three different days? A. Yes, because Denton had the 156th Street property long before. The 119th Street property and the 127th Street property he got in exchange for the Beard Building in June.

Q. Well, how does that refresh your recollection with respect to the time that you got the instructions to draw those three different mortgages? A. It doesn't. The fact is they were drawn on a certain day, and all I know is the entry in my book showing that I drew them on that day.

Q. Do you know what instruction Denton gave you? A. Yes.

Q. What did he give you? A. "Draw a $7500 mortgage on 119th Street and Seventh Avenue

to Hogencamp, and draw a $5,000 mortgage on 127th Street.

Q. Did you ask him why? A. No, sir; I did not.

Q. Did he tell you why? A. Yes.

Q. Why? A. He told me Hogencamp wanted it.

Q. And that is all? A. That is all—well, it wasn't all; he told me just what it was; he told me that everything, all he had, Hogencamp wanted to come in on and get control of; and he wanted, if there was a contract to be made he must be consulted on it, and if there was any property that was not in process of sale he must have a mortgage on it; and every bit of property he had was mortgaged to Hogencamp or assigned to Hogencamp in some way.

Q. Now, this $7500 mortgage which was on the 146th Street and Seventh Avenue property—A. Yes, sir.

Q. Were you present at the sale of the 146th Street and Seventh Avenue property? A. No, sir.

Q. Do you know anything about the payment of the moneys upon that sale? A. I have the contract on which the sale was made, and I went to the attorney who closed the contract, and saw the check drawn to the order of Dickinson, which bore the endorsement of William Hogencamp.

MR. LANE: I object to that; I asked him whether he knew of his own knowledge, I am not asking for hearsay.

Question repeated at the direction of the Court.

THE VICE CHANCELLOR: You did not ask him that.

MR. LANE: Then I object to it because it calls for a yes or no answer.

THE VICE CHANCELLOR: I will sustain that objection. He is entitled to a yes or no answer, on cross-examination, to a question of that description. Strike out what the witness said, and read the question, and let the witness answer "Yes" or "No."

Quesion repeated.

THE VICE CHANCELLOR: (To the witness.) Answer "Yes" or "No",—that you do know anything about it, or do not.

A. Yes.

Q. Do you know of your own knowledge because you were present there, or from information that somebody has told you? A. I do not know from my own knowledge from being present, but I do know from the check which bore Mr. Hogencamp's endorsement, and also the contract for the sale of that property.

MR. LANE: Now, I move to strike that out, on the ground that it is not responsive.

THE VICE CHANCELLOR: I overrule that.

THE WITNESS: And also the satisfaction piece of the mortgage which was on file in the Register's office.

Q. Is it on file in the Register's Office? A. Yes, sir.

Q. Did you see it there? A. I did.

Q. When? A. This morning.

Q. What is its date? A. January 30th, 1909 That is the date it was filed.

Q. Well, what was its date? I did not ask

you when it was filed? A. Oh, don't ask me that; I don't know.

Q. Well, didn't you find out what the date was? A. January 30, 1909, Liber 561 of Discharges, page 197.

By The Vice Chancellor:

Q. That is the date of the record, is it (referring to the date given by the witness)? A. I think that is the date of the record.

Q. And you do not think that is the date of the instrument? A. I don't know, your Honor.

By Mr. Lane:

Q. That satisfaction was brought over here by the Register this morning was it not? A. It should have been.

Q. Wasn't it? A. It should have been.

Q. Didn't you ask for it from the stand here a few minutes ago?

The Vice Chancellor: Ask the Register, do you mean?

Mr. Lane: No, ask counsel for it.

A. I asked for the discharge, yes, sir.

Q. Of that mortgage? A. It must have been that mortgage, because it is here (referring to the witness's memorandum).

Q. And it was not produced, was it?

The Vice Chancellor: What do you mean by "it was not produced?

Q. It was not given to you?

The Vice Chancellor: No, it was not handed to the witness.

Q. Do you know why? A. No, sir; I do not know why.

THE VICE CHANCELLOR: You will have to probe Mr. Carey's mind, because it was Mr. Carey's suggestion that that was not placed in evidence. The witness suggested that it be placed in evidence, and Mr. Carey said he did not care to have it placed in evidence.

MR. CAREY: If you ask for information about it I will tell you, Mr. Lane.

MR. LANE: I don't want it now.

Recess until two o'clock, P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock, P. M.

THOMAS O'CALLAGHAN, JR., Esq., recalled.

CROSS EXAMINATION RESUMED BY MR. LANE:

Q. Go back to your memorandum, or any information that you have got with respect to the payment of $15,654.47 on March 20th, 1901, and tell me whether there is anything that refreshes your recollection of the receipt by Mr. Hogencamp on that day of about $9,000 more? A. No, sir.

Q. Or on the next day? You don't know? A. Not on that memorandum.

Q. And you have no memoranda, or no means of telling whether Mr. Hogencamp got about $9,000 on that day or the next day from a Denton transaction? A. On the 20th of March he did not get $9,000 from any of Denton's transaction that I was present at.

Q. You don't know about the 21st? A. (Consulting memoranda.) I have no book that will give me information about that.

BY THE VICE CHANCELLOR:

Q. You haven't any recollection of it whatever at the present time? A. No, sir.

BY MR. LANE:

Q. Do you recollect Mr. Denton getting a large sum of money about the 20th or 21st day of March, through you, outside of this fifteen thousand dollars, now? A. No, sir.

Q. There was no transaction that went through your office from which Mr. Denton would receive, on or about that date, twenty-four thousand and some odd dollars? A. Absolutely not.

Q. That you know of? A. He never had a transaction that he got twenty-four thousand dollars in cash in my office that went to him direct.

Q. He never had any such transaction? A. He never had such a transaction.

Q. And you do not remember a payment, or a check or series of checks aggregating twenty-four thousand three hundred and twenty-seven dollars and some cents, which were delivered to Mr. Denton on either the 20th of March or the 21st of March, 1901? A. Absolutely no.

Q. Nor do you remember any conversation which took place between Hogencamp and Denton in your presence with respect to such a payment of twenty-four thousand three hundred and some odd dollars? A. No, sir.

Q. When the building upon which the mortgage for $7500 was a lien sold (that is, 146th Street and Seventh Avenue)?

THE VICE CHANCELLOR: Now, that is the

mortgage that this witness has testified was given to Mr. Hogencamp to secure him for having allowed Denton to have those 50 shares of Second National Bank stock.

A. The contract was made on the 24th of March, 1905, and was closed on the 15th of November, 1905. I was not present at the closing.

Q. Will you give me the Liber and page of the record of the mortgage from Redfield to Hogencamp that you have just referred to? Is that the one in evidence—if it is I do not want to repeat that. A. The mortgage is dated the 15th of August, recorded the 21st of August, in Liber 128 of Mortgages, Section 7, at page 367; and was discharged on January 30, 1909, in Liber 561, page 197.

By The Vice Chancellor:

Q. Aren't you mistaken about that, Mr. O'Callaghan? A. I am talking now about the mortgage on the corner of 146th Street and Seventh Avenue, for $7500, which I drew to secure Mr. Hogencamp.

Q. Yes, but the satisfaction piece for that mortgage was produced here this morning, wasn't it, and I dictated it on the minutes? A. No, your Honor, that was for the 119th Street property. That satisfaction was produced but it was not offered in evidence.

Q. I read it on the minutes? A. No, sir; that was for 119th Street.

By Mr. Lane:

Q. You say this was discharged when? A. On the 30th of January, 1909, in Liber 561 of Discharges, page 197.

Q. Did you find recorded an assignment of that

mortgage from Hogencamp to anybody else? A. I did not look for one.

Q. Who signed the discharge? A. The Commercial and Realty Company of Jersey City, I think.

Q. Then it had been assigned? A. Yes, it was assigned from Hogencamp to Levy, and Levy assigned to the Commercial & Realty.

Q. When was the first assignment to Levy? A. Well, if you let me have Mr. Carey's record I will give you the date of it.

Q. That is what I want. A. I don't know; I do not carry that in my mind.

MR. LANE: (To Mr. Carey). Give me the date of the Levy assignment.

Mr. Carey now proffers the following information from his memorandum: "William Hogencamp to Sidney Levy, Assignment of Mortgage, dated June 6, 1906, and recorded June 7, 1906, in Book 213, page 259, Section 7; assigns mortgage recorded in Liber 128, page 367, on which $7000 is due with interest from February 15, 1906."

Q. Did you find the record of the mortgage from Redfield to Hogencamp on the 119th Street and Seventh Avenue property? A. I did.

Q. Give us that? A. It is recorded in Section 7, Liber 127 of Mortgages, at page 345.

Q. And that is the one of which the discharge was offered in evidence this morning and read into the record? A. Yes, sir; May 31, 1902.

Q. Now, did you find the record of the $5,000 mortgage? A. I did not look for it.

Q. You did not look for that one? A. No.

Q. That is on the 127th Street west of Columbus Avenue property? A. Yes, sir.

Q. Why, how is it you looked for the other two, and not for that? A. Because I looked for the discharges, the satisfaction of them. I knew they were discharged, and Mr. Carey told me to get the discharges if I could, to see who signed the discharges.

Q. Then you did not find any discharge of the $5,000 mortgage? A. I did not look for it.

Q. Well, if you looked for the two $7500 mortgages why didn't you look for the discharge of the $5,000 mortgage? A. Because I was instructed by Mr. Carey only to look for the two discharges of the $7,500 mortgages.

Q. Then you don't know where that mortgage was recorded? A. I do; it was recorded in the Register's Office, New York City.

Q. Liber and page? A. I couldn't tell you that.

Q. What date was it recorded? A. 21st day of August, 1901.

Q. The same date as the recording of the others? A. Yes, sir; the three mortgages were put on it at the same day.

Q. There was no conversation with respect to this $24,000 assignment which you talked about, other than that Hogencamp wanted whatever Denton had? That is all that was said? A. Why, no.

Q. Well, what was the conversation with respect to the assignment of the $24,000 mortgage? A. He asked me whether there was a mortgage put on this new piece of property. I said "Yes" "For how much"? "$24,000". "To whom"? "Robert L. Shaw." "Well, why don't I get an

assignment of it"? and I says "Go and ask Denton, and if Denton tells me to draw an assignment to you of this $24,000 I will do it, otherwise I won't."

Q. There was nothing said as to the purpose of the assignment, other than that? A. Nothing but "I want it."

BY THE VICE CHANCELLOR:

Q. You mean "I, Hogencamp"? A. "I, Hogencamp, want it,"—that is all.

BY MR. LANE:

Q. Did you look for the discharge of that mortgage? A. No.

Q. Do you know the Liber and page it is recorded in? A. I know the date of the assignment, and I got a copy of the assignment which I made from the records of the office.

BY THE VICE CHANCELLOR:

Q. That is, the assignment from Shaw to Hogencamp? A. The assignment from Shaw to Hogencamp.

Q. That will recite the Liber and page of the mortgage? A. Yes, sir.

MR. CAREY: I will put that in evidence if you want it Mr. Lane.

MR. LANE: I have not asked for it.

THE WITNESS: That mortgage is recorded in four different Libers and pages. It is dated the 26th day of August, 1901.

THE VICE CHANCELLOR: Dated the 26th of August, 1901. Go ahead.

THE WITNESS: And is recorded on the 28th day of August, 1901, in Liber 120 of Mortgages, page 478, Section 2, Block 475;

also in Liber 95 of Mortgages, at page 133, Block 738,—

MR. LANE: What section was that?

THE WITNESS: That must be the second section. Also in Liber 116 of Mortgages, at page 223, Section 4, Block 1182; also Section 7, Liber 127 of Mortgages, at page 352, Block 2059.

BY MR. LANE:

Q. Where is the assignment recorded? A. The assignment is recorded in the Register's Office of the County of New York, on September 30th, 1901.

BY THE VICE CHANCELLOR:

Q. Whereabouts, what Liber and page? A. I do not seem to have it, your Honor; I do not have that Liber and page here.

BY MR. LANE:

Q. And you did not look for the discharges? A. Why, certainly not.

Q. Mr. Denton gave to you, and you cashed, the checks which I show you now (handing the witness eleven checks)? A. Yes, sir; I got the money on all those checks.

MR. LANE: I ask that they be marked for identification.

THE VICE CHANCELLOR: They will be marked G. W. B, 5 to 16, inclusive.

The checks were so marked.

RE-DIRECT EXAMINATION BY MR. CAREY:

Q. Mr. O'Callaghan, you stated that you went to see Mr. McKelvey on the 12th of August, 1901, relative to a claim that he had against Mr. Den-

ton: Can you tell me on what day you actually left the 50 shares of stock with Mr. McKelvey? A. August 15th.

Q. And at that time did you receive J. B. V, 13, a check of Mr. McKelvey's to Mr. Denton? A. Yes, sir.

THE VICE CHANCELLOR: Was that admitted?

MR. LANE: It was admitted without my objection. I think I called for it.

THE VICE CHANCELLOR: Yes, I think so; but in case it was not admitted it is now admitted.

Q. You say that the book, the register which you have been referring to, is not in your handwriting, but in the handwriting of your clerk, as I understand? A. Yes, sir.

Q. Now, will you state what your custom was in reference to having entries made in that book, and examining them, if such was your custom?

THE VICE CHANCELLOR: What is the use of going into all of this? Mr. Lane did not object to his using the book, and it would be too late now for him to successfully argue that the witness had no right to use the book; and the book itself cannot be offered in evidence—at least, I do not assume you are going to offer it.

MR. CAREY: Oh, no; I do not do that. That is all.

HENRY M. DENTON, recalled.

DIRECT EXAMINATION BY MR. CAREY:

Q. Mr. Denton, what was your business in 1900? A. I was in the real estate business in New York.

Q. And how long before 1900 had you been in that business in New York? A. Several years.

Q. And how long subsequent to 1900 did you continue in that business in New York? A. I was there until about 1905.

Q. How will you tell us the nature of that business? A. It was exchanging property, buying and selling properties and backing builders in building operations.

Q. And in connection with these building operations did you have any money of your own to finance them? A. In the beginning; yes, sir.

Q. Did you have money of your own to finance them, without borrowing? A. At times, no, sir.

Q. And where did you borrow? A. From Mr. Hogencamp, Mr. William Hogencamp.

Q. And Mr. Hogencamp was president of the Second National Bank of Jersey City? A. Yes, sir.

Q. And you borrowed how, from Mr. Hogencamp, originally? A. I borrowed generally with my notes secured with mortgages on New York property, second mortgages on New York property.

Q. And what was done with the notes? A. I gave them to Mr. Hogencamp, and some of them were discounted at the bank.

Q. At the Second National Bank? A. Yes, sir.

Q. Where did you do your banking business? A. Second National Bank, Jersey City.

Q. During all the time that you were engaged in the real estate business in New York, down to 1903? A. Yes, sir.

Q. To what extent had you been a borrower from the bank in connection with these real estate transactions? A. I had been a very large borrower.

Q. And your bank borrowings, were they all at the Second National Bank of Jersey City? A. Yes, sir.

Q. In your dealings with the bank, with whom did you deal—with what person did you deal, or with what persons? A. Mr. Hogencamp, almost exclusively.

Q. And did you deal with anybody else but Mr. Hogencamp? A No, sir; there might have been one or two instances, in his absence, that Mr. Hasking might have looked after the matter; but most always Mr. Hogencamp.

Q. How long prior to 1900 had you known Mr. Hogencamp? A. Several years, I do not remember just how long.

Q. What were your relationships with him? A. Very friendly.

Q. Confidential? A. Yes, sir; very.

Q. Now, did you make any settlement with the bank in the early part of 1900? A. Yes, sir.

Q. And when did you make that settlement? A. In April, 1900.

Q. Do you remember the date? A. April 2nd.

Q. And will you state what that settlement was? A. I made a check, payable to J. G. Hasking as cashier of that bank, for upwards of fifty-seven thousand dollars, which was payment of my full indebtedness to the bank.

Q. After the delivery of that check to the bank,

did you, at that time, owe the bank anything? A. No, sir.

THE VICE CHANCELLOR: He has just said it was settlement in full with the bank. I do not understand that that is disputed, is it?

MR. LANE: At the moment he delivered the check, that is not disputed.

Q. You have heard Mr. Hogencamp's testimony relative to a certain stock transaction between yourself and Mr. Hogencamp: Will you state what occurred in connection with that stock transaction, beginning at the beginning? A. During the month of April, 1900 I was in the bank one day—in fact, I used to be in almost every day, very frequently—but this day in particular Mr. Hogencamp says "Denton I have been a good friend of yours in the past, done you a lot of favors; now I want you to do me a favor." I asked him what it was. He said he wanted to transfer to me one hundred shares of the stock of the Second National Bank, which he owned, at a consideration of $24,000. He says "You have a deed to the Lakewood property here in the bank; you also have a mortgage from Hanford on the undivided one-half of the stable property: I would like to have you give me two notes for $12,000 each and secure the notes by a mortgage on the Lakewood property for $12,000, and an assignment of the Hanford mortgage for a like amount. I can then use your notes in connection with those mortgages, and you can use the stock to borrow money outside, which I cannot use in the bank."

Q. You say that was in April 1900? A. April 23rd, 1900.

Q. How do you fix that day?A. Why, I merely remember from the notes.

Q. What notes? A. The two notes I gave on that day.

Q. And you think those two notes were in connection with the stock transaction? A. Yes, sir.

Q. What did you say to Mr. Hogencamp? A. I said "All right."

Q. Did you talk with Mr. Hogencamp at that time in regard to the value of this stock? A. I did not.

Q. Did you know anything about the value of it? A. I did not.

Q. Did you make any inquiry of Mr. Hogencamp as to what dividends it was paying, or anything of that kind? A. I ask no questions whatever regarding the stock.

Q. What did you give to Mr. Hogencamp at that time? A. My recollection is that I gave him two notes, and as I remember it—

By The Vice Chancellor:

Q. You have stated that you already had there, in Mr. Hogencamp's hands the $12,000 mortgage on the Lakewood property, owned by you, and the $12,000 mortgage which Hanford had given to you on the Jersey City stable property, didn't you? A. Well, I had there the deed of the Lakewood property and the mortgage on an undivided one-half that Hanford made on the stable property, at that time.

Q. He had not, at that time, the mortgage from you to him on the Lakewood property? A. No, sir.

By Mr. Carey:

Q. Go on? A. And, as I remember it, Mr.

Hogencamp says "We can fix the other matters up later."

Q. I show you exhibits C-6, and C-7, and ask you if you think those are the notes given at the time? A. Yes, sir; I think those were the notes.

Q. What did Mr. Hogencamp give you, at that time, if anything? A. Nothing whatever.

Q. Did he make any offer to deliver to you at that time 100 shares of stock of the Second National Bank? A. He did not.

Q. Did you, at that time, see any certificates of stock of the Second National Bank? A. I did not.

Q. Did you, subsequently, see some stock certificates of the Second National Bank? A. Yes, sir.

Q. I show you certificate of stock of the Second National Bank, which have been marked J. B. V, 5, for 60 shares; J. B. V, 6, for 40 shares; J. B. V, 7, for 50 shares, and J. B. V, 8, for 10 shares, and ask you if those are the certificates which you subsequently saw? A. Yes, sir; those are the certificates.

Q. When did you first see those certificates? A. At the time I receipted for them, August 12th, 1901.

Q. You say August 12th, 1901, why? A. Because I see it there on the certificates.

By The Vice Chancellor:

Q. Well, you do not see it on the certificates, do you? A. I see it on the stub of the certificates.

Q. Well, that is a different thing, it is because you find your receipt on the stub, showing you received them under that date? A. Yes, sir.

By Mr. Carey:

Q. Looking on the back of the certificates, is that your endorsement on J. B. V., 6? A. Yes, sir.

Q. And on J. B. V., 7? A. Yes, sir.

Q. And on J. B. V., 8? A. Yes, sir.

Q. Between the time when Mr. Hogencamp spoke to you about transferring this stock to you and the time when you receipted for this stock, August 12th, 1901, had you seen any of the certificates of stock of the Second National Bank? A. I had not.

Q. Had Mr. Hogencamp offered to deliver to you any certificates of stock between those times? A. No, sir.

Q. I show you J. B. V., 5,—has that certificate your endorsement anywheres? A. No, sir.

The Vice Chancellor: It is admitted, I think, that that was for 60 shares, and really never became efficacious, that it was afterwards cancelled, and that the 40, 50 and 10 were issued to make up the hundred? I think there is no dispute about that, is there, Mr. Lane?

Mr. Lane: No, sir.

The Vice Chancellor: Nothing is rested on that J. B. V., 6, for 60 shares. Mr. Hogencamp explained that it was a mistake, and it was put right back in the book, and these others were made out to represent the hundred shares; so that you need waste no time on that.

Q. Do you know where the 100 shares of stock were between April 23rd, 1900, and August 12th, 1901? A. I do not.

Q. And did Mr. Hogencamp ever tell you anything about the location of those shares of stock between those dates? A. He did not.

Q. Do you know what use those shares of stock were put to between April 23rd, 1900, and August 12th, 1901? A. I do not.

Q. Did Mr. Hogencamp ever tell you anything about the use to which they were put? A. He did not.

Q. Did Mr. Hogencamp, between those dates, tell you that they were used as collateral, either for any notes or indebtedness of yours, or any notes or indebtedness of Mr. Shaw's?

MR. LANE: I object to that as leading.

THE VICE CHANCELLOR: I suppose, in form, that would be within the definition of a leading question, because it undoubtedly suggests, even if it does not result in, a yes or no answer, which would be the counsel testifying, and not the witness. But this witness has already testified that between those dates Mr. Hogencamp never told him anything at all about the stock, and I assume that he is being asked this as a direct contradiction of Mr. Hogencamp's statement that he did tell him something of the sort—is that the view, Mr. Carey.

MR. CAREY: That is the idea.

THE VICE CHANCELLOR: In view of that, I will permit it. I think in Mr. Hogencamp's testimony he has said that he told Denton that this stock was there.

MR. LANE: I had not recollected that that was Mr. Hogencamp's testimony.

THE VICE CHANCELLOR: I think there is enough in Hogencamp's testimony to call

for a direct denial (if this man is in a position where he can properly do so) of that. For that reason I am going to permit the answer.

A. No, sir.

Q. When did any part of this stock first come into your possession, or into the possession of any person for you? A. On the day I receipted for the stock it came into possession of either O'Callaghan, or I, or both of us.

Q. How much? A. 50 shares.

By The Vice Chancellor:

Q. One certificate? A. One certificate; yes, sir.

Q. For 50 shares? A. Yes, sir.

By Mr. Carey:

Q. And will you state the circumstances under which that came into your possession, or into the possession of Mr. O'Callaghan? A. It was in regard to the McKelvey transaction, and given us by Mr. Hogencamp with which to borrow money, —in other words, to secure my note and borrow money.

Q. Well, state the circumstances under which it was necessary for you to borrow money? A. My recollection is that at that time the New York and Batavia Wood Working Company either had a judgment against me in Genessee County, or were about taking a judgment, which they were going to transfer to New York.

Q. Now, have you any memorandum from which you can tell whether or not that claim was in judgment, or whether or not it was in suit pending? A. I have.

Q. Will you refer to that memorandum and

tell us what the situation was? A. It is in my satchel there.

Q. Well get it.

The witness thereupon left the stand and returned with a satchel, and after examining the contents of the satchel said that the memorandum was not in the satchel but was in a white envelope on counsel's desk, and the envelope referred to was handed to the witness by Mr. Carey.

MR. CAREY: I do not think the witness has in mind my question.

Question repeated.

Q. Haven't you a memorandum of judgments entered against you? A. Oh, I have a memorandum of judgments entered against me; yes, sir.

Q. Can you tell from that memorandum whether this New York and Batavia Wood Working Company's claim was in judgment, or not? A. I think I can. (The witness thereupon produced a paper to which he referred). I have here a copy of judgments against me that states that on June 26th, 1900, in the Supreme Court of Genessee County there was a judgment of $13,527.95.

Q. 1900? A. That is what it staates here.

Q. Look at your memorandum and see? A. (Reading from memorandum) "Perfected June 26, 1901,"—I was mistaken.

THE VICE CHANCELLOR: It is 1901.

Q. So that judgment was entered then, in June 1901? A. June 26, 1901.

Q. In what County? A. Genessee County, in the Supreme Court of Genessee County.

Q. Had it been docketed in New York County,

do you know, at the time you went with this stock to McKelvey? A. No, sir.

Q. Do you recall whether Mr. McKelvey was making any threats as to docketing the judgment.

THE VICE CHANCELLOR: Why do you spend a lot of time on that? I do not want to cut you off, if there is any reason at all for it, Mr. Carey; but Mr. Hogencamp has not denied—he has been on the stand and been over this thing—and he has not denied that it was to help this man out with respect to the McKelvey matter that that 50 shares were loaned.

MR. LANE: We do not deny it. We admit the judgment, and admit that he was being forced on it.

THE VICE CHANCELLOR: You see, Mr. Hogencamp has already said that it was to help this man out with respect to McKelvey that this stock transaction about the 50 shares in the Chase National Bank, and all that, took place. There is no question about that, is there Mr. Lane.

MR. LANE: Absolutely none.

Q. What did you do in order to raise money through Mr. McKelvey? A. Mr. O'Callaghan and I went there with 50 shares of the stock of the Second National, and I gave McKelvey my note with that as security, which he had discounted at the Chase National Bank in New York, in which he was banking. Do you want me to tell the rest?

Q. Go on, yes? A. Then on the 15th day—

Q. (Interrupting). When was this that you took the stock over there? A. We took the stock over to McKelvey on the 15th, and he took the

stock and my note to the Chase National Bank and had it discounted,—a note of $6,000.

Q. And you received at that time this check, J. B. V., 13, of Mr. McKelvey, to your order, for $3783.33 (showing the witness the Exhibit referred to)? A. I did.

Q. And what did you do with that check? A. Brought it over and gave it to Mr. Hogencamp.

Q. At that time did you receive into your possession any more than the 50 shares of stock? A. I did not.

Q. And at the time Mr. Hogencamp let you have the 50 shares of stock to go to Mr. McKelvey, state whether or not he required any security of you for it? A. He did; yes, sir.

Q. What was the nature of the security which he required? A. A mortgage of $7,500, on the northwest corner of 146th Street and 7th Avenue, New York.

Q. And do you know whether the mortgage was executed and given to Mr. Hogencamp? A. I do.

Q. And did you see the mortgage here in Court this morning? A. Yes, sir.

Q. Now, when did you next get any further portion of this stock in your possession? A. At the time I made the loan from the Commercial Trust Company of Jersey City.

Q. Do you know when that was?

THE VICE CHANCELLOR: He need not testify, because they have introduced the evidence as to that, and had the books there. It was stated that it was the 23rd day of August, 1901. That is right, is it not, Mr. Lane?

MR. LANE: Yes, sir.

Q. Now, at that time, what did you take to the Commercial Trust Company, if anything? A. I took, according to my recollection, two certificates one of 40 shares, and one of 10 shares, and deposited that with my note for $6,000.

Q. Certificates of what? A. Certificates of stock of the Second National Bank of Jersey City.

Q. Where did you get them? A. Mr. Hogencamp gave them to me.

Q. Can you state whether or not the certificates which you took there are two of the certificates for which you receipted on the 12th of August, 1901, and which have been marked J. B. V. 6 and J. B. V. 8. A. They are; yes, sir.

THE VICE CHANCELLOR: He has already said he never saw any but those three, and as two of them were for 40 and 10, on the doctrine of exclusion those must be the two he took to the Commercial Trust Company. That is true is it not, Mr. Denton.

THE WITNESS: Yes, sir.

MR. CAREY: I do not know whether it is worth while for me to put on the record who Mr. McKelvey was.

THE VICE CHANCELLOR: Oh, it is sufficiently shown that he represented the New York and Batavia Wood Working Company, is it not, Mr. Lane? You do not care for anything more as to that, do you?

MR. LANE: No, sir.

If J. B. V., 12, was not admitted when it was marked, it is now, without objection, admitted.

MR. CAREY: And is it also admitted that

this Exhibit J. B. V., 12, is a part of the proceeds of the $6,000 loan raised at the Chase National Bank, and that this part of that loan went to pay a portion of the claim of the New York and Batavia Wood Working Company against Mr. Denton?

MR. LANE: And that the balance came to Hogencamp, yes.

Q. Mr. Denton, when did you next have any communication with Mr. McKelvey in regard to this stock? A. It was either one or two days after that note of $6,000 came due.

BY THE VICE CHANCELLOR:

Q. Do you remember the length of the note? A. Three months.

Q. Then it would not be due until November? A. It was either November 13th or 14th, somewheres in that vicinity, 1901.

BY MR. CAREY:

Q. What had become of the note for $6,000, which you gave to the Chase National Bank?

THE VICE CHANCELLOR: He did not give it to the Chase National Bank. He gave it to McKelvey.

Q. The $6,000 note which you gave to McKelvey? A. McKelvey had paid the note, and had the note and stock in his possession.

BY THE VICE CHANCELLOR:

Q. At this time in November, you are asked? A. Yes, sir, either the 13th or 14th of November, I cannot state positively which.

BY MR. CAREY:

Q. Did you see Mr. McKelvey at about that

time in connection with this stock and the note? A. I did.

Q. Did you see the note and stock in his possession? A. I did.

Q. You had failed to meet the note when it became due? A. I had.

Q. Do you know what Mr. McKelvey had done with the note? A. He had it in his possession. He paid the note, and had the note and stock in his possession.

Q. And why did you go over to see Mr. McKelvey in regard to it? A. Mr. Hogencamp sent me over, and I came back and told Mr. Hogencamp what Mr. McKelvey told me.

Q. What did you tell Mr. Hogencamp which Mr. McKelvey had told you in regard to this matter? A. That the New York and Batavia Wood Working Company thought that I owned the stock, and as I owed a balance on the judgment they were going to retain the stock, and apply its proceeds, whatever they could sell it for, to my credit.

By The Vice Chancellor:

Q. Over and above the $6,000? A. Yes, sir, over and above the $6,000.

By Mr. Carey:

Q. Did you tell Mr. Hogencamp why Mr. McKelvey stated that the company thought you owned the stock? A. I did.

Q. And why? A. Because it was in my name.

Q. What else did you report to Mr. Hogencamp? A. That is all I remember at that time.

Q. Did you then see Mr. McKelvey again in regard to the matter? A. I did.

Q. How soon afterwards? A. Well, it might have been the same day, or the next day.

Q. And did you report to Mr. Hogencamp what Mr. McKelvey said? A. I did.

Q. State what you reported to Mr. Hogencamp as coming from Mr. McKelvey, as to this next interview. A. That I told Mr. McKelvey that while the stock stood in my name, it did not belong to me; that I would give him my word or give him my affidavit. He said he was satisfied, having dealt with me so long, to take my word, but he would have to satisfy his clients; and he asked me if I could get a letter from Mr. Hogencamp or the cashier regard the stock. I said I thought I could. He said "Get the letters and bring them over," and see what I could do.

BY THE VICE CHANCELLOR:

Q. Who was Mr. Honeck? A. He was an officer in the Batavia and New York Wood Working Company.

THE VICE CHANCELLOR: For the purpose of clarity the Court desires to put upon the minutes that the handwriting in the letter, J. B. V., 9, was so indistinct that we thought the name was "Herick," but from something that subsequently turned up the Court determined it was "Honeck," and as there was no explanation who "Honeck" was, that was the reason of the above question.

BY MR. CAREY:

Q. Did you get letters from Mr. Hogencamp, after reporting to him? A. I did.

THE VICE CHANCELLOR: They are in evi-

dence. They are Exhibits J. B. V., 9, and J. B. V., 11. They were both offered, and are in evidence. J. B. V., 9, is the letter from Hasking to Honeck, and J. B. V., 11, is the letter from Hogencamp to McKelvey; both dated November 16, 1901.

Q. I show you those letters, J. B. V., 9, and J. B. V., 11, and ask you if those are the letters which you received from Mr. Hogencamp? A. They are.

Q. What did you do with them? A. Delivered them to Mr. McKelvey.

Q. And did you report to Hogencamp what Mr. McKelvey said upon receiving those letters? A. Yes, sir.

Q. And what was that? A. That he would keep the one letter and mail the other to the New York and Batavia Wood Working Company, and report to me later.

Q. These letters, J. B. V., 9, and J. B. V., 11, refer to the stock certificates which Mr. McKelvey had at that time? A. They did.

THE VICE CHANCELLOR: "Certificate"—it says distinctly in J. B. V., 9, "Certificate A, 348," certificate for 50 shares.

Q. Did you at that time receive the certificate back from Mr. McKelvey? A. No, sir.

Q. Now, returning to the loan which you negotiated at the Commercial Trust Company in Jersey City, what did you do with the proceeds of that loan? A. Gave the check to Mr. Hogencamp.

Q. Will you state when you next got these certificates for the 40, 10 and 50 shares in your possession? A. The following May—

THE VICE CHANCELLOR: 1902, that would be.

THE WITNESS: 1902—Mr. Hogencamp told me to draw my check for the amount, principal and interest, due the Commercial Trust Company, and go down and get the 40 and 10 shares, and my note. I drew the check, and he certified it, on the 1st day of May. I went down to the Commercial Company, got the two certificates of stock, 40 and 10, and took them up to the Bank and delivered them to Mr. Hogencamp. On the same day I had a check certified to the order of John J. McKelvey for $7,255, my check. The following morning, May 2nd, I went to Mr. McKelvey's office, gave him the check, received my note and the 50 shares of stock which was pledged as security for the note, and I came from there to the Second National Bank.

BY THE VICE CHANCELLOR:

Q. Having now in your possession the certificates for the 40 and the 10 shares? A. No, sir; having in my possession the certificates for 50 shares, received from Mr. McKelvey.

Q. And the 40 and 10 you had gotten at the Commercial? A. I did not have them, Mr. Hogencamp had them. I went from Mr. McKelvey's office to the Second National Bank of Jersey City, and Mr. McKelvey gave me the 40 and 10 shares which I had left with him the day before. I then took a car and went to the Hudson Trust Company in Hoboken.

BY MR. CAREY:

Q. How did you come to go there? A. Mr. Hogencamp told me to, or asked me to.

Q. Go on, tell what you did then. A. I went over, and came back, and told Mr. Hogencamp what I did, namely, this: that I went over and saw Mr. Tierney, I told him I had 100 shares of the stock of the Second National Bank, and would like to loan on my note as large an amount as I could, secured by that stock. I was in his private office. He took down some quotations and said he saw it quoted at 165, but he would not want to buy it at that, he did not consider it worth over 135; but that he would loan me $13,500 on my note secured by that stock. I thereupon signed a note, left the stock, and received a check for $13,500, took a car, came back, endorsed it and handed it to Mr. Hogencamp, and it was deposited in my account in the Second National Bank.

Q. I show you Exhibits C-13 and C-14, and ask you if C-13 is the check you delivered to the Commercial Trust Company at the time you received back the certificates of stock; and if C-14 is the check you delivered to Mr. McKelvey at the time you received from him the certificate of stock? A. They are.

Q. Now during the time this loan stood at the Commercial Trust Company in Jersey City do you know who paid interest on it? A. I did.

Q. How? A. Through my checks, filled out at Mr. Hogencamp's dictation.

Q. While the Hudson Trust Company loan stood, who paid interest on that? A. I did.

Q. With your checks? A. Yes, sir.

Q. And will you state how that was paid off? A. When the note came due first, my remembrance is that the note was renewed, and the interest paid, and after that there was a payment made

at one time of $2,000 and at another time of $1500, which reduced the note to $10,000. I do not remember the dates of those payments.

THE VICE CHANCELLOR: We have those. One was on June 30th, 1903, and the other was on the 29th of October, 1903. The first payment was $1500, the second $2000. The whole note was paid off on the 27th of January, 1905.

Q. At the time of those two installment payments did you have a personal account in the Second National Bank of Jersey City? A. I had a personal account there until December, 1903.

BY THE VICE CHANCELLOR:

Q. Now, the payments were, one on the 30th of June, 1903, of $1500, and the other on the 29th of October, 1903, of $2000; and in view of those dates, please answer the question. A. I had not.

BY MR. CAREY:

Q. How did you come to make payments on this loan in the Hudson Trust Company? A. Mr. Tierney wanted the loan reduced, and I reported to Mr. Hogencamp, and Hogencamp told me to take my check over and give it to him.

Q. And in compliance with that direction, did you take your check? A. I did.

Q. How did you come to pay interest on this loan at the Hudson Trust Company? A. In the same manner, in the same way

Mr. Carey calls upon Mr. Lane for Exhibits C-27 to C-33, inclusive, which are produced.

Q. I show you Exhibits C-27 to C-33, inclusive.

Will you look those over and see if those are checks of yours which went to the Hudson Trust Company in connection with this loan? A. They are.

Q. And C-58 and C-59 (exhibiting the said exhibits to the witness)? A. They are.

Q. Did Mr. Hogencamp say anything to you about your checks being taken care of in this connection, I mean by that, these checks which I have shown you? A. He said he would care for them.

Q. And did you know out of what moneys he had those checks paid? A. I did not.

Q. When the loan was finally paid off, did you have anything to do with that? A. Yes, sir.

Q. What did you do? A. I went and paid the loan, and got the stock, and brought it over and gave it to Mr. Hogencamp.

Q. Have you ever seen the stock since that time? A. I have not.

Q. Until you saw it here in Court? A. No, sir; until I saw it here in Court. I saw it in the preceding trial of *Shaw against Richards,* I remember.

Q. The Richards-Shaw trial? A. Yes, sir.

Q. Up to the time of the Richards-Shaw trial had you ever seen it from the time you returned it to Mr. Hogencamp until you saw it in Court at that trial? A. I had not.

Q. Up to that time did you know what had been done with the stock? A. I did not.

Q. Had any information come to you from Mr. Hogencamp relative to what had been done with the stock during that period? A. No, sir.

Q. When did you first learn that the stock

New Jersey State Library

had been sold? A. I never learned anything about it.

BY THE VICE CHANCELLOR:

Q. When did you first learn it? You know it now, don't you? A. Oh, I know it now, of course.

Q. When did you first learn it? A. Oh, in the Court.

Q. At what case? A. During the trial of the Richards-Shaw case, as I remember it.

Q. The first hearing of which was held in 1907, is not that correct? A. Yes, sir.

Q. And it was not until about a year after that that any testimony was given about the sale of the stock? A. It must have been about the Spring of 1908.

MR. LANE: May 14th, 1908.

THE VICE CHANCELLOR: The trial was begun in 1907, but was adjourned for a year owing to some necessity of amendments, and the actual testimony was given in May of 1908.

BY MR. CAREY:

Q. Did Mr. Hogencamp ever give to you any of the proceeds of the sale of that stock?

THE VICE CHANCELLOR: He does not pretend ever to have done so. Why waste any time on it? Is not that so, Mr. Lane?

MR. LANE: Yes, sir.

THE VICE CHANCELLOR: There is not the slightest pretense of it. He tells you what he did with it. There is so much that is controverted in this case that I would not spend any time on that which is not.

Q. Mr. Hogencamp has testified that you asked him to take up the loan and save the stock from being sacrificed.

THE VICE CHANCELLOR: The loan at the Hudson Trust?

Q. The loan at the Hudson Trust—is that so? A. No, sir.

Q. Mr. Hogencamp has stated in his testimony that he notified you of the application which he made of the proceeds of the sale; did he do so? A. He did not.

THE VICE CHANCELLOR: The proceeds of the sale of the stock.

MR. CAREY: Of the stock.

THE VICE CHANCELLOR: I think Mr. Hogencamp's testimony was just the opposite, that he did not. As I recall his testimony, he said that "I made up an account between me and Denton, without Denton knowing anything about it, as the result of which I arrived at the conclusion that there was seven thousand and some odd dollars on the sale of this stock, and I credited that to the $13,000 note I had of Denton." He don't pretend to have communicated it to Mr. Denton. On cross-examination you tried to get him to say that and he said he might, but not to his recollection.

MR. CAREY: My recollection is that in one place in his direct examination he said—

THE VICE CHANCELLOR: In his direct examination he positively declined to suggest such a thing; and when you went at him on cross-examination and tried to shake

him on that you finally got him to say, well, maybe he did but he did not think he did. There is no testimony here on which any sane Court can reach the conclusion that he ever notified Denton of anything of the sort. I do not think that Mr. Lane will even argue it.

Q. Between April 23rd, 1900, and the time when you returned this stock to Mr. Hogencamp, did you make any other use of that stock than what you have now stated? A. No, sir.

Q. Did you receive any dividends from this stock? A. I might have receipted for some, but I did not receive them. Quite often I would receipt for the checks as they were fast in the stub book—the check fast to the stub.

Q. Did you at any time deposit any of those dividend checks to your own credit? A. No, sir.

Q. Did you ever know of any of those being deposited to your credit personally? A. I did not.

THE VICE CHANCELLOR: There is no testimony by anybody that any of them were ever deposited to his credit.

Q. Prior to the testimony of Mr. Hogencamp in this suit did you know that any of those dividend checks have been deposited in any account which Mr. Hogencamp was carrying for you? A. I did not.

Q. I show you Exhibits C-23, C-24 and C-25, and ask you when you first saw those checks? A. Now is the first I have seen them.

Q. Were you in Court the other day when they were produced? A. I saw them at a distance, but not to notice them.

THE VICE CHANCELLOR: He simply saw the pieces of paper that were being talked about, but he did not inspect them, that is what you mean, don't you?

THE WITNESS: That is what I mean.

THE VICE CHANCELLOR: I do not think there is the slightest pretense that Mr. Hogencamp ever showed those checks to Denton. If there is, I do not recall the testimony.

Q. While this stock was standing in your name did you ever vote on it? A. No, sir.

Q. Or attend any stockholders' meetings? A. No, sir.

Q. What did you do in connection with voting upon the stock, if anything? A. Gave Mr. Hogencamp a proxy.

BY THE VICE CHANCELLOR:

Q. I understand your testimony concerning this matter of dividends comprehensive enough to include a denial that you personally, of your own knowledge, ever received the benefit of any dividends on that stock from the 23rd day of April, 1900, down to this minute—is that correct? A. Yes, sir.

BY MR. CAREY:

Q. Was any demand ever made upon you to pay the bond and mortgage in this suit? A. No, sir.

Q. I mean prior to the beginning of this suit? A. No, sir.

Q. Prior to the beginning of this suit, was any demand ever made upon you to pay the interest upon this bond and mortgage? A. No, sir.

Q. Were you ever requested to pay any interest on the two $12,000 notes which you say you gave in connection with the stock transaction? A. No, sir.

Q. Or upon the Shaw note for $24,000 of July 23rd, 1900? A. No, sir.

Q. Or upon the Shaw notes of $12,000 and $13,000 which are said to have taken the place of the Shaw note for $24,000? A. No, sir.

BY THE VICE CHANCELLOR:

Q. When did you get back the two $12,000 notes? A. I don't remember that I ever got them back.

Q. Well, did you ever get them back? A. No, sir; not to my recollection.

BY MR. CAREY:

Q. Was any demand ever made upon you to pay those two $12,000 notes? A. No, sir.

Q. And can you state whether or not demand was ever made upon you to substitute anything in place of the two $12,000 notes? A. The only recollection I have of that is that Mr. Hogencamp wanted, on account of the position he was placed in in the matter, to change it in some shape, on account of judgments being brought against me in New York; he was afraid they might be sued on over here, and that would get my mortgage in trouble at the Bank. I think at one time he did speak something about changing it on that account, for his protection and accommodation.

Q. Did he ever make any demand upon you to that effect? A. He did not.

Q. For what purpose was the Lakewood mortgage and the assignment of the Hanford mortgage

made to Mr. Hogencamp? A. To assist him in using the notes, the two $12,000 notes which I gave him on April 23rd, 1900.

Q. And were they given to him for any other purpose? A. Never.

Q. Did Mr. Hogencamp ever request you to allow those to be used for any other purpose than that? A. No, sir.

Q. Did he ever have any conversation with you relative to any use of the Lakewood bond and mortgage and the assignment of the Hanford mortgage for any other purpose? A. He did not.

Q. Did Mr. Hogencamp ever state to you that those mortgages were being used for any other purpose than the one which you had authorized him to make use of it for? A. No, sir.

Q. You have testified that on the 2nd of April, 1900, you paid to the Bank all of your indebtedness; did you have any Bank balance left at that time? A. Yes, sir.

Q. And will you state whether or not your notes, at that time, were sufficient to use up that bank balance? A. They were. I had obligations due, and others to soon mature, which I had to care for.

Q. Do you know when you next received a discount at the Second National Bank? A. A short time after that there was a discount.

THE VICE CHANCELLOR: It is in evidence and Mr. Lane does not object to the Court stating on the minutes that the books of the Bank show a loan to Mr. Denton on the 23rd day of April, 1900, of $16,000; is that correct, Mr. Carey?

MR. CAREY: That is correct; yes, sir.

Q. At the time you settled with the Bank did you make a settlement of any judgments which were then standing against you?

THE VICE CHANCELLOR: Where, in New York?

MR. CAREY: In New York.

A. About that time; yes, sir.

Q. And about how much did those judgments amount to? A. I do not know exactly; I can tell by reference to this paper (referring to memorandum in the hands of the witness).

Q. Well, refer to your paper, if necessary, and tell us. A. Referring to the witness's memorandum.) There were two judgments, March 8th, 1900, against me, in favor of Richard Cumming, one of $2458.99, and another of $1528.65. There is one of May 23rd, of Morris Price and Samuel Lifchitz—

BY THE VICE CHANCELLOR:

Q. That is after the time. We want to know about the time you paid the Bank the $57,000, did you pay off any judgments then? Do not tell us about something that happened afterwards. A. Before that, on March 8th, I paid those two Cummings judgments; yes, sir.

BY MR. CAREY:

Q. Now, after that time were judgments recovered against you, in the year 1900? A. There were.

Q. Will you state when, and the amounts, and where? A. On May 23rd there was a judgment obtained against me by Morris Price and Samuel Lifchitz of $371.50, which was vacated May 28th, 1900.

Q. Vacated? A. Yes, sir.

Q. Go on. A. There was a judgment, November 5, 1900, in the City Court in New York, in favor of Henry B. Vaughn, for $540.19, which was satisfied November 7, 1900.

Q. Did Mr. Hogencamp know of these judgments which existed against you prior to April 23rd, 1900? A. He did.

Q. What knowledge had he concerning the judgments which were recovered against you after that time? A. I used to tell Mr. Hogencamp everything. He knew about all of them.

Q. During the year 1901, can you state what judgments were recovered against you? A. (Referring to the witness's memorandum.) Commencing June 4, 1901, the Riverside Bank obtained a judgment against me of $2,041.34; on July 13th the Wells & Newton Company obtained a judgment against me for $1051.64; on August 8th, 1901, Alexander Howell obtained a judgment against me for $2180.42; on August 15th, 1901, the American Missionary Association received a deficiency judgment against me of $10,149.77; on October 14th, the same year, William B. Dupree obtained judgment against me for $464.35; on June 26th of the same year (I don't know whether this is the same year, I presume it is from this copy) the Batavia and New York Wood Working Company obtained a judgment against me for $13,527.95; on October 24th the Consolidated Gas Company of New York obtained a judgment against me of $325.58; on November 24th Lillian B. Friedlander, Executrix of the last Will and Testament of Joseph B. Friedlander, deceased, obtained a judgment against Henry M. Denton, Stephen B. Pierce and Ernest Wetterer of

$818.66. That was all that I remember in the year 1901.

Q. What, if any, knowledge did Mr. Hogencamp have of the existence of those judgments? A. He knew about all of them.

Q. And when did he find out about them? A. About the time they were being obtained. I used to see Mr. Hogencamp almost daily and tell him everything that was happening.

Q. Now, toward the end of the year 1900, will you state whether or not you were able to finance yourself for these affairs that you were undertaking to carry in New York? A. I was not.

Q. What did you do? A. I saw Mr. Hogencamp, and he said that he would help me by furnishing moneys, and wanted me to turn everything that I received in to him, and have it disbursed through him, or with his directions.

Q. What did you do? What did you reply to that? A. I did as he asked me to.

Q. Now, beginning with 1901, will you state what was done with the net proceeds of the New York properties which were sold, in which you had an interest? A. I turned everything over to Mr. Hogencamp, except my small living expenses.

Q. And what is the fact with respect to the sales of properties in 1902? A. Everything went to Mr. Hogencamp.

Q. Will you state whether or not Mr. Hogencamp attended at the closing of the titles of the properties in which you were interested? A. He almost invariably did.

Q. And what did he do at the closing of the titles? A. Why, he instructed me what to do with regard to bidding in the property, or anything of that kind.

Q. And what, with respect to the proceeds? A. He used to put up whatever there was necessary—

Q. The proceeds, I say? A. Oh, the proceeds went to Mr. Hogencamp.

Q. Now, toward the end of 1902, will you state what your condition was financially? A. In worse shape than ever.

Q. And did you have any conversation with Mr. Hogencamp relative to your condition at that time? A. I did.

Q. State where the conversation took place, and what was said, so far as you can recall it. A. I told Mr. Hogencamp that I had been trying to ward matters off as long as I could with the hopes of getting a settlement with my creditors and meeting the deficiency judgments which were given where I was on bonds, and I found I couldn't compromise, and I practically threw up my hands, and said I might as well stop, I couldn't go any further, that I tried to compromise these large judgments, and they would not compromise, and I couldn't go any further.

Q. Can you tell whether or not the proceedings which lead up to the large judgments recovered in 1901 had been pending for some time? A. They had.

Q. And what did Mr. Hogencamp say in regard to your statement to him in 1902? A. Mr. Hogencamp and I then arranged in this way: he says, "Of course you have been turning the matter over to me, but you have been drawing out living expenses; what is the smallest amount you can get along on, and take charge of matters? Everything that comes in I want turned over to me, and I want disbursed through me." I told him I

thought $25 a week would be as little as I could live on. He then told me that I could draw out $25 a week, but he wanted me to turn over everything else to him, which I did.

Q. That arrangement of drawing $25 a week took effect when? A. In commenced on January 1st, 1903, and continued until April, 1905.

Q. From January, 1903, on, will you state whether or not you rendered statements to Mr. Hogencamp of receipts of rents from your properties? A. I turned everything over to him, and showed him the books. He used to be over in New York, and I showed him the books, with everything that was being done.

Q. And will you state how this payment of $25 a week to you was made, whether by Mr. Hogencamp, or whether by retaining it from the collections? A. I used to draw it out from the collections made.

Q. Did Mr. Hogencamp know that you did that? A. He certainly told me to.

Q. Now, will you state whether or not the rents of your properties were paid to Mr. Hogencamp after 1903? A. They were.

Q. After January, 1903? A. Yes, sir.

Q. State whether or not the rents had been paid to him prior to that time? A. They had.

Q. Do you know how extensively? A. Well, all the rents received, outside of what little I drew out for my living.

Q. Prior to 1903? A. Yes, sir.

Q. Do you know about what time you began to turn over rents to Mr. Hogencamp? A. Well, right from 1900 on.

Q. From 1900 on? A. Yes, sir.

Q. Did you turn over all the rents for 1900? A. Yes, sir.

Q. Everything? A. Everything except what I drew for my living. I might qualify somewhat—there were a few incidentals, that is, we had a bookkeeper, I think at a salary of six dollars a week. Outside of those incidentals, and what I drew for my living, I turned over to Mr. Hogencamp.

Q. Did you make any incidental disbursements around the buildings? A. Why, I used to disburse there, with Mr. Hogencamp's directions.

Q. Did you render him an account of such disbursements? A. Yes, sir.

Q. Will you state whether or not money was advanced by Mr. Hogencamp in connection with completing the building operations which you had in New York? A. Yes, sir.

Q. And with respect to what properties? A. 68th Street and West End Avenue, but mostly in 149th Street and 7th Avenue, where we were completing seven buildings.

Q. And how many buildings at the former place that you mentioned? A. My recollection is four.

Q. Four in one place and seven in the other? A. That is my recollection.

Q. Why didn't you complete those buildings? A. I hadn't the means to do it.

Q. Now, will you state in what way money was advanced by Mr. Hogencamp for the completion of those buildings, and state, if you can, about what time he began making such advances? A. The buildings in 149th Street and Seventh Avenue were commenced along in 1903. They would go ahead a ways and then stop for a while. In fact, they were several years in being completed.

Moneys were then advanced by Mr. Hogencamp in this way: there would be contracts made; I had the supervision of the buildings, and whenever there was a payment due I would go to Mr. Hogencamp and explain to him who the payment was due to and the amount; Mr. Hogencamp then would instruct me to fill in a check for what that amount of payment was, and to make payment, and he would care for the check.

Q. And did you do that? A. I did.

Q. Quite a large number of checks were introduced in evidence here yesterday, which Mr. Hogencamp testified were paid out of what he called "Wm. Hogencamp, Trustee Account," "Wm. Hogencamp, Rent Account," and "Wm. Hogencamp, Attorney Account." I ask you if that was the reason why those checks were given by you? A. It was.

Q. Up to what time was money advanced in that way, in connection with this building work? A. Until their completion, and after.

Q. Now, beginning with January, 1903, will you state what you did in connection with these buildings? A. I had full charge of them. I collected the rents. First I saw to the finishing of the buildings, had charge of it, and after that I had charge of the properties, collecting the rents, and disbursing through Mr. Hogencamp.

Q. And did you do the work usually done in connection with a renting office? A. Yes, sir.

Q. And were those services the services which you were drawing this sum of $25 a week for?

Objected to as leading. Objection sustained.

Adjourned until Thursday, September 29th 1910, at ten o'clock A. M.

Jersey City, N. J., September 29, 1910.

Hearing of the cause resumed at ten o'clock, A. M.

HENRY M. DENTON, recalled.

DIRECT EXAMINATION RESUMED BY MR. CAREY:

Q. For what services were you receiving twenty-five dollars a week, from January, 1903, on to some time in 1905? A. Supervising the completion of seven buildings, 149th Street and Seventh Avenue, and 68th Street, and the collection of rents, and general charge of the properties in New York in which Mr. Hogencamp was interested.

Q. Returning to the payment which you made to Mr. McKelvey by your check of May 1, 1902: How did it come that you paid $7255 instead of $6000 and interest? A. The note of $6000 had been due since November 12th prior to that, and there was some interest accumulations, and there was some difference in account owing by me to the Batavia which had matured, and Mr. McKelvey required that amount to surrender the stock and the note.

Q. After the delivery of the letters, Exhibits J. B. V., 9, and J. B. V., 11, to Mr. McKelvey, when did you next see them? A. I have no recollection of seeing the letters until during the progress of this trial; I saw them then in McKelvey's office among other papers connected with that case.

Q. And you went to Mr. McKelvey's office for what purpose? A. I was sent there during the progress of this trial to get all the papers I could bearing on this case.

BY THE VICE CHANCELLOR:

Q. Is McKelvey a lawyer? A. Yes, sir.

BY MR. CAREY:

Q. And those were among the papers that you received? A. Those were among the papers, and were accidentally found in looking through the papers.

Q. In the trial of *Richards vs. Shaw* you did not testify to anything in connection with this McKelvey transaction, did you? A. No, sir.

Q. Why didn't you? A. At that time the McKelvey transaction had entirely passed my recollection, I hadn't remembered anything about it, and was reminded of the transaction through an affidavit made by Mr. Hogencamp to reopen, or something in connection with the Richards-Shaw decree. I remember the affidavit made to reopen that decree.

Q. And after that affidavit was shown to you did you make investigation to ascertain what was done in connection with the McKelvey matter? A. I did.

Q. And in the course of the investigation did you discover any mortgage in connection with it? A. I did.

Q. Where did you investigate to find that? A. In the County Clerk's Office of the County of New York.

Q. And to how late a time did the investigations which you made in connection with the McKelvey transaction come down? A. To during this trial.

Q. Did Mr. Shaw owe you anything on the 23d day of April, 1900? A. No, sir.

Q. Did he owe you anything at any time during

the period from April 23d, 1900, down to September, 1902? A. He did not.

Q. You testified yesterday relative to turning over to Mr. Hogencamp, or to Mr. Hogencamp's receiving the net proceeds of sales of property in which you were interested in New York from 1901 on. From 1901 down to the beginning of 1903 do you recall whether Mr. Hogencamp turned back to you any of the proceeds of sale of those properties? A. Not to my recollection.

Q. Between 1901 and 1903 were any proceeds turned back to you for disbursements? A. Well, there might have been some disbursements went through my account and were disbursed that way, but always with Mr. Hogencamp's direction.

Q. From 1901—

THE VICE CHANCELLOR: When you say "from 1901" do you mean from the beginning, or from the ending.

Q. From the beginning of 1901 on, did you make disbursements of the proceeds of those properties, outside of what was used for your living expenses, of your own volition, or how? A. I did it under Mr. Hogencamp's supervision and direction.

Q. And is that true of disbursements which you made of proceeds which went through your own account? A. It is.

Q. How did you come to do this under Mr. Hogencamp's supervision? A. Mr. Hogencamp had all the interest at stake; he held the mortgages and was advancing money, so I turned all proceeds to him.

Q. When you say you "turned all the proceeds to him" do you mean that you turned them always direct to him? A. Not direct; I disbursed

through my account, with his supervision and instructions.

Q. And was that done because of anything which Mr. Hogencamp said to you? A. That is the way he wanted matters arranged; yes, sir.

Q. Did Mr. Hogencamp receive any security for the moneys which were advanced by him in connection with these New York properties? A. Yes, sir; he received mortgages, second mortgages on New York properties; in fact, he always had mortgages for at least double the amount I owed him.

Q. After the beginning of 1901 what was your custom with reference to communicating with Mr. Hogencamp before closing any contracts of sale? A. I always communicated with him. I saw him almost daily.

Q. Who determined whether or not a contract should be closed? A. Mr. Hogencamp.

Q. Will you state whether or not Mr. Hogencamp, during the period from the beginning of 1901 on, made any sales of property without consulting you? A. In 1905 Mr. Hogencamp made a sale of a property without consulting me.

Q. What property was that? A. Seven houses at 149th Street and Seventh Avenue.

Q. Will you state the details of the transaction? A. The buildings had been completed and almost fully rented, and he was desirous of making a sale of the property to get the money out of it. I did all I could to effect sales, took several purchasers to the Bank, but we did not consummate any sale; we had a tentative offer which I told Mr. Hogencamp would be increased. While that was in progress Mr. Hogencamp sold the property to Max Mark for $210,000, and I knew

nothing about it until after the sale had been made and the contract signed. I told Mr. Hogencamp I was sorry he sold it without consulting me as I could have sold it at a larger price.

Q. Your Bank pass-book and also the Bank's books show that your account in the Second National Bank was closed early in 1903? A. Yes, sir.

Q. Did you, from that time on, have any account in any other Bank down to the close of the business transactions in New York? A. I did not.

MR. CAREY: I call for the stub check book of Mr. Denton, beginning with 1901, on, and the checks drawn by Mr. Denton, other than those which have been put in evidence, from 1901 on.

MR. LANE: The stub check book is not produced.

THE VICE CHANCELLOR: You haven't got it?

MR. LANE: Not that we know of. Some of the checks we have.

THE VICE CHANCELLOR: What do you do with those you have?

MR. LANE: There are about one hundred and fifty of them. I suppose if they are called for they go in evidence?

THE VICE CHANCELLOR: Not necessarily; not unless you insist.

MR. LANE: I do not insist upon it.

THE VICE CHANCELLOR: What do you do?

MR. LANE: I proffer them for such use as Mr. Carey may make of them.

THE VICE CHANCELLOR: All right. Does this package include all the checks that Hogencamp says that he has of Denton's?

MR. LANE: I am not sure.

THE VICE CHANCELLOR: Well, that is the call.

MR. LANE: Well, I cannot tell that; I can only pick out now what we have got here. I did not have this call before.

THE VICE CHANCELLOR: There was no notice served on you of this?

MR. CAREY: Yes, there was a notice.

THE VICE CHANCELLOR: He just said there was not. There was a notice, Mr. Carey?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: What is the response to the call now, Mr. Lane?

MR. LANE: I will endeavor to pick the checks out, and Mr. Carey can use them; I have no wish to conceal them.

THE VICE CHANCELLOR: I know, but what is the response to the call? A response that you will endeavor to pick something out won't do. He now says, "I call on you for all the checks of Denton's that are in Mr. Hogencamp's possessiong, beginning with the checks of January 1st, 1901."

MR. LANE: The response is that I give you some, I do not know whether they are all or not (handing to Mr. Carey a number of checks).

MR. CAREY: I think, perhaps, your Honor, that, having these, I might have them sorted and it will save some little

time, instead of undertaking to sort them now.

THE VICE CHANCELLOR: All right.

MR. LANE: What do you mean, as to dates?

MR. CAREY: Yes.

MR. LANE: Then I will help you sort them.

Q. There appear in the books of the Bank "Wm. Hogencamp, Trustee Account," "Wm. Hogencamp, Attorney Account," and "Wm. Hogencamp, Rent Account," covering various periods from November, 1901, down to January, 1906 Mr. Hogencamp has testified that those accounts were carried for you; will you state whether or not Mr. Hogencamp told you anything with reference to those accounts during the time they were running? A. He did not.

Q. Did you have any information that such accounts were being carried? A. I had not.

Q. You knew, of course, that large amounts of money were being turned over to Mr. Hogencamp during this period?

MR. LANE: Objected to as leading.

THE VICE CHANCELLOR: I overrule that objection. That is not the sort of leading question that could do any harm—"did he know that"? Of course we all know it. There is no harm in assuming what has been testified to by both parties over and over again. It is only the basis of another question.

A. I did.

Q. Do you know in what way Mr. Hogencamp

was keeping track of those moneys? A. I did not; I supposed, of course, he had an account to protect the checks with, but I really knew nothing about it.

By the Vice Chancellor:

Q. Nothing about the style of the account, I suppose you mean? A. No, sir; I didn't know anything about the style of the account.

By Mr. Carey:

Q. State whether or not Mr. Hogencamp consulted you with reference to the amounts of money in his hands in which you were interested? A. I thing during the completion of the 149th Street buildings there was times when he told me to give a note and he would protect the note; that is about all that was said—give a note in payment of some of those bills, which I did.

Q. Mr. Hogencamp has testified that at various times he told you of the condition of these accounts—what do you say as to that? A. He did not.

Q. During the time that Mr. Hogencamp was advancing moneys in connection with these New York properties, outside of the time when you had an account and were receiving discounts from the Bank, will you state whether or not Mr. Hogencamp stated to you the source from which the moneys were coming that were being put into those properties, outside of the moneys which you were turning over to him? A. He did not.

Q. Did he mention to you the Second National Bank in connection with the matter of these advances? A. No, sir.

Q. The individual ledger of the Bank, No. 17, page 688, shows that there was deposited to the

account of Wm. Hogencamp, Trustee, on the 30th of January, 1902, two items, one of $3539.54, and the other $7584.79. Now, do you know what the item of $3539.54 was for? A. The Rose judgment.

Q. And do you know what the item of $7584.79 was for? A. Net proceeds of the sale of 287 Lenox Avenue, New York City.

Q. Was that a cash transaction at that time? A. It was.

Q. The net proceeds of the sale of what property? A. Ury's Bakery, 287 Lenox Avenue, New York.

Q. And had this item of $7584.79 anything whatever to do with the mortgage for $7500 given to Mr Hogencamp in connection with the McKelvey transaction? A. No, sir.

BY THE VICE CHANCELLOR:

Q. Did you know whether this $7584.79, which was the net proceeds of the sale of the Ury Bakery property, could have been credited on any mortgage that Mr. Hogencamp held on that property? Did he hold a mortgage for $7500, or any similar sum, on that property? A. No, sir.

BY MR. CAREY:

Q. Do you know who Charles Gifford was, to whom a check was drawn by Mr. Shaw in August, 1902? A. I cannot recollect; no, sir.

Q. You have testified that Mr. Hogencamp usually attended the closing of titles to this New York property; did you usually attend the closing of the titles? A. Yes, sir.

Q. Do you recall whether or not Mr. Hogencamp attended at the closing of the title of the

property at 48th Street between Tenth and Eleventh Avenues? A. He did.

Q. And how was it with regard to the property at 149th Street and Seventh Avenue, the seven buildings? A. That I know nothing about.

THE VICE CHANCELLOR: That is the property that he said Mr. Hogencamp sold without his knowledge.

BY THE VICE CHANCELLOR:

Q. Did he also close the title without your being present? A. Yes, sir.

BY MR. CAREY:

Q. How about the 68th Street and West End Avenue property? A. I was at that closing.

Q. And was Mr. Hogencamp there? A. Yes, sir.

Q. And as to 146th Street and Seventh Avenue? A. I was there, and Mr. Hogencamp was there, and Mr. York was there and the agents.

Q. How about the two transactions in connection with the Beard Building? A. Mr. Hogencamp was there, and I was there, and O'Callaghan and the counsel were there.

Q. And 119th Street and Seventh Avenue? A. Mr. Hogencamp was there, and myself.

Q. I show you the items of disbursements in the account which Mr. Hogencamp produces in the book marked L. M. G., 1, and ask you to go over those items and state, so far as you can, what those disbursements were for? A. "August 16, 1901, W. H. Redfield, Interest to May 1st, DeForrest Brothers, $577.45," was interest on 119th Street and Seventh Avenue, upon which

Mr. Hogencamp held a second mortgage of $7500. The item of August 20th, 1901, "Bowers & Sands, Interest to September 1st, $275," was interest money. I am not sure of the property that it was on. Hogencamp held the mortgage. I am not sure which it was. "August 20, 1901, Metropolitan Life, Interest to September 1st, $409.63"—that was interest money on properties on which Mr. Hogencamp held a mortgage; I don't just recollect just which one it was, Grand Street or some of those four pieces; I couldn't state definitely.

By the Vice Chancellor:

Q. Some of those four pieces you have bought from the Metropolitan Life? A. Taken in exchange; yes, sir.

Q. Go on. A. "August 21, Second National Bank, Interest to July 12, $24.65," I know nothing about. The next item is "August 22, F. N. Rose, Judgment, $3,448.29"—that was an assignment of the Rose judgment taken by Mr. Hogencamp on the judgment on the Ury Bakery.

Q. And he had to pay this amount of money to get this assignment made to him; is that correct? A. Yes, sir.

By Mr. Carey:

Q. Was that the item which was paid to him on January 30th, 1902, amounting to $3,539.54? A. That is the item, with interest.

Q. Go on. A. The next item on this account is "August 23d, W. Hogencamp Note and interest, $1674.88." That I know nothing about. The next item is "August 23d, G. R. Brewster, Mt. Vernon, July 1, $875." That was interest on a first mortgage on the Fairfax Building at Mt. Vernon, in which Mr. Brewster was a counsel.

BY THE VICE CHANCELLOR:

Q. Well, what had you to do with that? A. Mr. Hogencamp held a mortgage on that property, a second mortgage.

Q. Well, what had you to do with it—did you have the title, or some one have the title for you? A. Somebody had the title for me; yes, sir.

Q. Go on. A. "August 23d, B. & M. Co., Interest to July 1st, $337.50." I think that was some bond and mortgage company where there was interest, but I do not recollect it now.

Q. On some of your properties? A. Yes, sir.

Q. Go on. A. "August 26, W. H. Redfield, Stroh & H., $1,000." That was a bill paid to Stroh & Huber, who were plumbing contractors on the buildings at 149th Street and Seventh Avenue.

BY MR. CAREY:

Q. What interest did Mr. Hogencamp have in that property? A. He had all the interest; he was completing the buildings.

BY THE VICE CHANCELLOR:

Q. Who held the title to that property? A. W. H. Redfield.

Q. And Redfield took the title for you, didn't he? A. Originally; yes, sir.

Q. Well, I do not understand why you qualify it by saying "originally"—did he ever take title afterwards for anybody else? A. No, sir.

Q. Go on. A. "August 30, H. M. Denton, $247.50"—that was a check given me to give Mr. O'Callaghan for something in connection with the properties. "September 5, 1901, T. O'Callaghan, $150"—that was a check given to O'Callaghan, as I understood at the time, for services rendered

Hogencamp in a private transaction of his own. "September 17, H. M. Denton, Watchman, $21"—that was a watchman on the Seventh Avenue buildings at 149th Street. "September 17, H. M. Denton, Stamps, &c., $87.32"—that was something given O'Callaghan, I suppose, in connection with the transaction.

Q. Revenue stamps, you mean, for documents, and things of that sort? A. Something of that sort, or recording fees.

Q. Well, it might be both? A. Yes, sir. "September 15, H. M. Denton, F. B. Brill, $200"—Mr. Brill, a hardware merchant in this town, was furnishing hardware for the completion of the Seventh Avenue and 149th Street buildings, and that was a payment on account. "September 27, T. O'Callaghan, Recording, &c., $53.88"—that, I remember, went to O'Callaghan for recording expenses, stamps, &c. "October 10, H. M. Denton, Metropolitan Life, $320"—that was interest money on some of those properties in which Mr. Hogencamp was interested. "October 18, H. M. Denton, De Forrest Brothers, $105"—that was interest money on 119th Street and Seventh Avenue buildings. "October 21, H. M. Denton, Taxes, 124th Street, $1113.89"—that was taxes paid on the northeast corner of Lexington Avenue and 124th Street, New York, on which Mr. Hogencamp held a second mortgage of $12,500.

Q. And the title to the property was held for you? A. Yes, sir.

Q. Go on. A. "October 29th, H. M. Denton, Account of Shaw Note, $250"—I know nothing about that, except I think there was some note of that kind appeared in this trial.

Q. A $250 note? A. I think so, if I am not mistaken.

Q. Well, do you know anything about that item? A. No, sir; I do not.

Q. Go on. A. "November 1st, H. M. Denton, Lexington Avenue, Interest, $1012.50"—that was interest on the mortgage on 124th St. and Lexington Avenue property, New York, on which Mr. Hogencamp held a second mortgage of $12,500.

Q. And this check was drawn to you, what did you do with it? A. I gave it to the lawyer that held the mortgage. "November 13, H. M. Denton, Interest, 119th Street, $967.50"—that was the 119th Street and Seventh Avenue corner, for which Mr. Hogencamp held a mortgage of $7500.

Q. And what did you do with this money that he gave you, represented by this check? A. I disbursed it under his directions.

MR. CAREY: I would like those exhibits that were put in yesterday, beginning with C-45, to C-61, I think it is.

The exhibits called for by Mr. Carey were produced by Mr. Lane.

BY MR. CAREY:

Q. Look at Exhibit C-47, check, Wm. Hogencamp, Trustee, to Stroh & Huber, note, for $252.50, the check being dated February 10th, 1902. A. I am looking at it.

Q. Tell us what that check is for. A. That check was given in payment of a note given to Robert L. Shaw, December 10th, 1901, signed by me and endorsed by Shaw, and given to Stroh & Huber, who were the plumbers completing the seven bildings on 149th Street and Seventh Avenue.

Q. What connection had Mr. Hogencamp with the completion of those buildings? A. At that

time there was a payment due them, and Mr. Hogencamp told me to give them a note. I went and saw Stroh & Huber and offered to give them my note, which they refused to take without an endorser. I went back to Hogencamp and asked him what to do. He told me to go up and ask Mr. Shaw to endorse the note and when the note became due he would care for it.

Q. What had Mr. Hogencamp to do with those buildings? A. He was furnishing the money to complete them.

Q. C-46—what was that note and check for? A. That was a check given to take care of the note of December 10, 1901, drawn to Robert L. Shaw, signed by me, endorsed by Shaw, and endorsed by Stroh & Huber, who were the plumbers completing the 149th Street and Seventh Avenue buildings, and given for the same purpose.

Q. C-49—what was that check for? A. That was a check given to take care of a check given by me under date of January 30, 1902, to the Emigrants' Industrial Savings Bank for $560, which was interest that was due on two mortgages they held on the two houses on 48th Street between Ninth and Tenth Avenues.

Q. C-50—a check of Hogencamp, Trustee, for $400, to H. M. D., Painting, dated March 10, 1902? A. That was a check given to care for two checks of mine, one of March 8, 1902, drawn to the order of I. Ossermann, for $300, and another check of March 12, 1902, drawn to I. Osserman, for $100. Ossermann was a painter employed to complete the buildings, and I gave these checks at Mr. Hogencamp's orders.

Q. What buildings? A. 149th Street and Seventh Avenue, New York.

Q. Suppose you look over the remainder of these exhibits, and state whether or not they related to the 149th Street buildings. A. To the best of my recollection, they relate as follows: C-52A—the checks embodied in that up to C-52I were for the 119th Street transaction. C-53 was in connection with the 149th Street buildings. C-55 was in connection with the 149th Street buildings. C-56P, 149th Street. C-56O, 149th Street. C-51A to C-51E were, my recollection is, for 149th Street. C-56A, 149th Street. C-56B, 149th Street. C-56C, 149th Street. C-56D, 149th Street. And all the following exhibits are, according to my recollection, in connection with 149th Street: C-56E, F, G, H, L, M, J. K; C-59, C-60 and C-61.

Q. Now state what the payments were made for. A. C-52C was paid to a plasterer named John F. Niebuhr, I think, who did the plastering. C-52E was to F. B. Brill for hardware. C-52G was wages.

Q. Wages for whom? A. Wages for a man named Schmachtemberger, who worked there.

Q. What did he do there? A. Well, he had charge, he had supervision there in my absence, and was a general mechanic, and looked over the work to see that it was properly done.

Q. Go on. A. C-52H and C-52I were either paid to Schmachtemberger, or through Schmachtemberger, for wages—not necessarily his wages, but they may have been pay lists.

Q. What as to the other checks in C-52? A. It is only as far as my recollection goes, they were pay lists to pay off with Saturday nights.

Q. Go on, take the next. A. C-53 I haven't any definite knowledge of. It was in connection with

that building, but I cannot specify. C-55 was a check given in payment of material furnished by Washburn Brothers when there was a strike on over there, given to Mr. Shaw to pay for the material. We could not buy material in New York at that time. C-56P was given to I. Osserrmann, painter, doing the painting work. C-56O was given to Stroh & Huber, who were the plumbing contractors on those buildings. C-51A to C-51E, five checks, I think were pay lists on those buildings. C-56A, F. A. Brill, hardware. C-56B, L. W. Romaine, was a contractor on those buildings. C-56C was material furnished by lumber men. C-56D was a check given to an electrician who did work on those buildings. C-56E, to Church E. Gates & Co., who furnished the timbers. C-56F was given to Lord & Taylor, who furnished the carpets in the seven buildings. C-56G was given to the United States Gas Fixture Company, who furnished the gas fixtures in those seven buildings. C-56H to Charles Goldstein. He was a glass man and that was for glass furnished in those buildings. C-56L to Schmachtemberger, for wages. C-56M to Charles Conant, electrician for those buildings. C-56J to the United States Gas Fixture Company, the gas fixture people who furnished the gas fixtures there. C-56K, L. W. Romaine, was a man that furnished material there. C-59 was given to Henry Anderson, the architect of those buildings. C-60 was Mr. Hogencamp's check given to take care of a note, in fact, two notes, one of which was given October 19th to the order of R. L. Shaw, by me, endorsed by Shaw and Stroh and Huber. It went to pay those people, who were the plumbers. C-61, a check of $18.50, was in connection with those buildings, but I cannot specify how.

Q. How about Exhibit C-56Q? A. That was a check of $280 given to the Emigrants' Industrial Savings Bank as interest on mortgages held on the 48th Street properties, New York.

Q. And C-56N? A. Was a check given to Francis Spear for $225 as interest on the Lexington Avenue mortgage, which they held. C-56I was a check given to Isaac A. Sheppard & Company for $500, for gas ranges furnished on the 68th Street and West End Avenue buildings, four buildings.

Mr. Carey calls on Mr. Lane for the production of Exhibits C-5, C-22, C-34 and C-41, and the same are produced and handed to Mr. Carey.

Q. I show you Exhibits C-5, and you will note on the back some endorsements: "Shaw, $629.26, Hanford, $72, Denton Bal., $106.56," making a total of $807.82, which is the amount of the check in question, which is a check drawn by you, payable to the order of Interest accounts, dated March 14, 1903; and I ask you were those endorsements on the back of the check at the time it was signed by you? A. No, sir.

Q. Do you recall ever seeing those endorsements prior to the time when this exhibit was presented in court here? A. I do not.

Q. I show you Exhibit C-22, a check drawn by you, dated January 4, 1905, for $1983.79, and call your attention to the endorsement on the back of that in pencil. Do you recall ever seeing this endorsement on that check prior to the time it was exhibited here?

Q. Did you have at any time any knowledge that any payments of interest were being made,

out of any account in which you had any interest, on the Shaw note of $24,000? A. No, sir.

Q. Or upon the Shaw note of $12,000 dated June 30th, 1902? A. No, sir.

MR. CAREY: Now, your Honor, if it will be agreeable to the Court and counsel, I would suggest that I have the right to put in, after examination during the intermission, such of these checks as I may deem advisable to offer, subject to Mr. Lane's right to have them all put in after my examination, so as to save the time of the court during the session of court; and I will turn the witness over for cross-examination.

THE VICE CHANCELLOR: I will permit that course to be pursued. You are through, with the exception of that reservation, are you?

MR. CAREY: I am through with the direct examination; yes, sir, and turn the witness over now for cross-examination, with the reservation that the Court has said it will allow.

CROSS EXAMINATION BY MR. LANE:

Q. Denton, when was the property on 146th Street and Seventh Avenue sold? A. My recollection is November, 1905. There had been a contract signed earlier than that in the same year—oh, not 1905, excuse me; I have forgotten the sale; it was after the sale of the 149th Street and Seventh Avenue property.

BY THE VICE CHANCELLOR:

Q. Well, was it after 1905, then, or before? A. After 1905—either 1905 or later.

By Mr. Lane:

Q. Were you present at the sale? A. I was.

Q. Do you know what the net proceeds of the sale were? A. Yes, sir.

Q. How much? A. $48,250 was the gross sale.

Q. The net? A. The net? An extension of a $7500 mortgage and, my recollection is, there was twenty-eight hundred and some odd dollars in cash.

Q. $2837.05? A. That is it, I think. I will have to refer to the contract to be definite.

The Vice Chancellor: He says it is about that.

Q. Who got that? A. Mr. Hogencamp.

Q. What else did Mr. Hogencamp get at the same time? A. A mortgage of $7500, reduced to $7000, extended for three years.

Q. Did he still hold that mortgage at that time? A. Yes, sir.

Q. Was it extended at that time? A. Extended at the time the sale was made; yes, sir.

Q. Assigned to anybody at that time? A. Not at that time; no, sir.

Q. When was it assigned to anybody? A. I only know from records, later than that.

Q. You don't know anything about it of your own personal knowledge? A. I do not.

Q. Do you know to whom it was assigned? A. Only from the records.

Q. What is the record? A. A man named Levy.

Q. Did you know Levy? A. I did not.

Q. Never heard of him? A. No, sir.

Q. Never had any business dealings with him? A. No, sir.

Q. Do you know what his first name is? A. I do not.

Q. What does the record show his first name to be? A. I don't remember.

THE VICE CHANCELLOR: Sidney—is not that correct?

Q. Is it Sidney? A. It may be.

THE VICE CHANCELLOR: It was testified to yesterday that the name was Sidney Levy.

MR. CAREY: I read it from my memorandum, your Honor.

THE VICE CHANCELLOR: Yes, you read from your memorandum that the name was Sidney Levy.

Q. When did the record show that mortgage to be assigned? A. I would have to refer to the record.

THE VICE CHANCELLOR: Mr. Carey read the record yesterday, and will read it again for your benefit.

MR. CAREY: My memorandum shows the assignment to be dated June 6, 1906, recorded June 7, 1906.

Q. When was the property at 119th Street and Seventh Avenue sold? A. Well, I will have to refer to ascertain about that. I cannot carry them in my memory.

Q. Do you know about when?

THE VICE CHANCELLOR: Well, if you know the date, suggest it to him, why don't you, Mr. Lane?

MR. LANE: I don't know.

THE WITNESS: I can tell by a copy of the check there.

THE VICE CHANCELLOR: Give him something by which he can refresh his recollection, so he can answer.

The copy of the check referred to by the witness is handed to him by Mr. Carey.

A. (After examining the copy of the check.) The sale was a short time previous to a check given which seems to be dated May 29th, 1902.

Q. A check for $6660.36? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. From whom to whom? A. E. O. Stanley, Treasurer to W. H. Redfield; Endorsed "W. H. Redfield," "to the order of Hogencamp, Wm. H. Redfield."

BY MR. LANE:

Q. And it shows it went through the bank to Hogencamp's account? A. "W. Hogencamp. Paid May 29, 1902, Second National Bank."

Q. That was the net proceeds of the sale, was it not? A. That is my recollection.

Q. And that is all Mr. Hogencamp got at that time, was it not? A. At that time.

Q. He satisfied the mortgage of $7500 at that time that he held on that property, didn't he? A. I presume he did.

Q. There was received at the time of the making of the contract on that property the sum of $1500, wasn't there? A. I do not recollect the amount. There was something received.

Q. Have you any memorandum from which you

can refresh your recollection as to that? A. I have not.

Q. The contract was made a few days before the sale, was it not? A. I should judge so.

Q. Not very long before it? A. I don't remember as to that.

Q. It was made about the 20th of May, wasn't it, that the contract was made? A. I cannot recollect definitely about that.

Q. And you think it may be that $1500 was deposited—was given as a deposit? A. I cannot testify as to that.

Q. Did Mr. Hogencamp get it, or did you get it? A. My impression was Mr. Hogencamp got it. It might have been thirty days prior to this check. I have no knowledge of that.

By the Vice Chancellor:

Q. Well, you did not get it, did you, personally? A. Not to my recollection; no, sir.

Q. Well, I mean, you did not get it so that you had it at your own individual disposal? A. No, sir.

By Mr. Lane:

Q. The 127th Street property west of Columbus Avenue—when was that sold? A. I do not recollect.

Q. Were you present at the sale? A. I do not recollect, no, sir.

Q. Have you any idea whether it was sold or exchanged? A. I have not.

Q. Did Mr. Hogencamp hold a mortgage on it? A. He did.

Q. You recollect that? A. Yes, sir.

Q. For how much? A. $5000.

Q. You recollect that? A. Yes, sir.

Q. When was that mortgage paid? A. I don't know.

Q. Do you know whether it has ever been paid? A. I do not.

Q. You don't know anything about it? A. No, sir.

Q. And you haven't the faintest recollection of when that property was sold? A. No, sir.

Q. Or how much you got for it? A. No, sir.

Q. To whom was the property at 146th Street and Seventh Avenue sold? A. There was a contract originally with a man named Smith, Henry F. Smith, as I recollect, and re-sold to a man that took the title, I have just forgotten his name now; the contract shows.

Q. What property did Marx get? A. 149th Street and Seventh Avenue—seven buildings.

Q. Did Mr. Hogencamp hold a mortgage on that? A. He did.

Q. How much? A. My recollection is that there was a mortgage of sixty-nine thousand and some dollars assigned to him.

Q. Assigned to Hogencamp? A. Yes, sir.

Q. And the net proceeds of sale were eighty thousand and some odd dollars, were they not? A. I don't know nothing about that except what was shown here. I was not there.

Q. You did not get any of the proceeds of sale? A. No, sir.

Q. They all went to Mr. Hogencamp? A. Yes, sir.

Q. You knew at the time that the property was sold that it was to be sold, did you not? A.

I knew after it was sold that it had been sold, of course.

Q. Well, did you ascertain or try to ascertain what the amount of the moneys received was? A. Why, it was public property; everybody knew it.

Q. Well, how much was it? A. $210,000.

Q. Did you try to find out what the net proceeds were? A. I did not.

Q. It did not interest you? A. No, sir.

Q. Did you try to find out how much Mr. Hogencamp had received? A. I did not.

Q. That did not interest you, either? A. No, sir.

Q. It was your property wasn't it? A. It was property held by Redfield.

Q. It was your property wasn't it? A. It might have been.

Q. You considered it your property? A. I considered I owned it through Redfield, yes, sir.

Q. You did not consider it Hogencamp's property, did you? A. I considered the proceeds Hogencamp's.

Q. Why? A. Because he had furnished money to complete the building.

Q. Then you did expect to pay Hogencamp back all the moneys he invested? A. Why, certainly he expected to get his money out.

Q. And you expected to pay him back? A. I expected he should get it out of the properties.

Q. And you expected to pay him back with interest? A. I didn't expect anything particular about it, only that he expected to get his money that he advanced on these properties out of the properties.

Q. Hogencamp had a mortgage of $24,000 on

four pieces of property of yours—do you remember that mortgage? A. I do not.

Q. You do not remember the mortgage assigned by Shaw? A. I remember there was such a mortgage.

Q. Do you remember what happened to the properties on which that mortgage was a lien? A. I do not.

Q. You haven't the least idea? A. Well, some of them I knew what became of them, not all of them.

Q. Well, it was on 76 Convent Avenue, 15th Street and Eighth Avenue, 71st Street and West End Avenue, and 62nd Street; Now, what happened to those properties? A. I cannot remember definitely. I think the Grand Street property was traded for property in Philadelphia; that is my recollection.

Q. Yes,—what happened to the Convent Avenue property? A. I don't remember.

Q. You don't remember what happened to that? A. I do not.

Q. What happened to the 15th Street and Eighth Avenue property? A. I do not recollect, further than Mr. Hogencamp received the rents from it.

Q. What became of the property? A. I do not recollect.

Q. 71st Street and West End—what became of that property? A. I do not recollect.

Q. What was the last thing you had to do with it? A. I do not remember having anything to do with it.

Q. You took title to it?

THE VICE CHANCELLOR: Isn't that in evidence?

MR. CAREY: No, sir.

Q. Did you? A. I did not take title to it; no, sir.

Q. In whose name was the title taken to it? A. I think in Redfield's; I am not sure about that.

Q. Who is Redfield? A. William H. Redfield?

Q. Yes. A. He was a man that acted for me originally in the real estate transactions.

Q. And employed by you in your stable up in New York at that time, wasn't he? A. No, sir.

Q. In Jersey City, I mean? A. Not employed by me, no, sir.

Q. Whom was he employed by? A. He was in the employ of Shaw at one time.

Q. When the firm was Denton & Shaw, or Shaw & Hanford? A. I think it was after it was Shaw & Hanford, to the best of my recollection.

Q. He was employed as a stableman, wasn't he? A. Yes, sir.

Q. And you used him in your transactions in New York? A. Occasionally; yes, sir.

Q. Well, quite often, according to the records? A. Quite often; yes, sir.

Q. And you don't know what happened to this $24,000 mortgage, do you? A. I do not.

Q. You don't know whether anything was ever paid on it, or not? A. I do not.

Q. Do you remember that the properties which it covered were actually sold or exchanged at some time or another? A. I remember the Grand Street was exchanged; I have no recollection of the others.

Q. You do not own them now? A. No, sir.

Q. Nor does Redfield? A. No, sir.

Q. And you don't know how they got out of Redfield, do you? A. I do not.

Q. The $24,000 mortgage—do you remember whether a release was given at the time the Grand Street property was exchanged? A. I do not.

Q. On the 21st day of March, 1901, you got a credit at the Second National Bank of Jersey City of twenty-four thousand three hundred and twenty seven dollars and some odd cents, as appears by the books of the Bank—do you know what that was for? A. I do not, other than as appears on the books.

Q. Have you got your pass-book here? A. Yes, sir

Q. Will you produce it? A. Yes, sir (producing pass-book and handing the same to cross-examining counsel).

Q. I show you the Individual Ledger of the Second National Bank, A to L, No. 17, page 388, the account of Henry M. Denton, and show you an item therein as follows: "March 21, 1901, Deposit $23,327.62," and ask you whether you know what that deposit was the proceeds of? A. I do not.

Q. Have you any idea? A. No, sir.

Q. Did you sell any property about that time? A. Not to my recollection.

Q. Are you sure of that? A. I cannot recall it. If we did I cannot recall it.

Q. Mr. O'Callaghan testified yesterday, Mr. Denton, that you sold property on March 20th, 1901, in New York, and that you received, or Redfield received a check for $15,654.47; that property was exchanged for properties 31 and 33 West 125th Street, New York; Now, do you remember the transaction? A. I do.

Q. And do you remember that you did, on March 20, 1901, get fifteen thousand and some odd dollars? A. My mind being refreshed from that affidavit, I do.

Q. Was there any other property at that time that you sold that you received moneys from? A. Not that I received moneys from. Mr. Hogencamp received moneys from several sales about that time.

Q. At that time what other sales were there that Mr. Hogencamp received moneys from? A. From this transaction with the Beard Building; the 22d Street building, or the 20th Street, I have forgotten which; and the 125th Street.

Q. How much did he receive from the Beard Building? A. I would like to look at that paper to tell.

Q. Which paper? A. The paper you have closing the titles, the paper that Mr. O'Callaghan has. I could not tell from memory.

THE VICE CHANCELLOR: Mr. O'Callaghan had a memorandum here of the closing of some of the titles. This witness says if he has that he can tell, otherwise he cannot. It was Mr. O'Callaghan own personal memorandum.

(The paper referred to was produced and handed to the witness).

Q. Now, with the memorandum that you have asked for before you, please tell us the dates at which these different properties that you have last mentioned were sold—when the moneys were received on them? A. The purchase price of the Beard Building was—

Q. I did not ask you that, I asked you the dates. A. March 20th, 1901.

BY THE VICE CHANCELLOR:

Q. That is the time of the closing of the title, was it? A. Yes, sir.

BY MR. LANE:

Q. That was an exchange for the 125th Street property? A. An exchange for the 20th Street building. The 20th Street building was exchanged for the 125th Street property.

Q. What were the net proceeds of the sale of the Beard Building? A. It is stated here "$15,654.47."

Q. All right; now, what other property was sold at that time? A. I do not remember of anything at that date.

Q. Nor around that date, either? A. August 2, 1901.

Q. Yes, but prior to that date, I mean not after that date during the month of March, 1901? A. I don't remember.

Q. Do you remember any large payments you received during the month of March, 1901? A. I don't remember; no, sir.

Q. Can you think now of anything that would bring you, with the exception of the sale of that building, the sum of twenty four thousand three hundred and twenty seven dollars, or anywhere near that, at that date? A. Not at this moment; no, sir.

Q. Now, it appears that on the 21st day of March, 1901, you drew a check for $10,344,—do you remember what that was? A. I do not.

Q. Mr. Hogencamp had commenced to advance you money when? A. Well, all along——

THE VICE CHANCELLOR: No, when did he commence?

A. Oh, in the latter part of 1900—in fact, prior to that; I do not remember just the date.

Q. As loans? A. Well, ever since I banked there in the Second National Bank.

Q. And as loans, I say? A. Yes, sir.

Q. On notes? A. Yes, sir.

Q. And you signed notes for him? A. I signed notes; yes, sir.

Q. Which were discounted at the bank? A. Yes, sir.

Q. And the moneys were used by you in these New York properties? A. Yes, sir.

Q. And you paid interest on them from time to time? A. I did.

Q. Do you remember that on April 23d, 1900, at the time these two notes, Exhibit C-6 and C-7 were signed that you had a conversation with Mr. Hogencamp with respect to stock? A. I do.

Q. On the day that you signed the notes? A. Yes, sir.

Q. And you have testified that what Mr. Hogencamp said was that he had helped you out, and that he wanted you now to help him out; that you had there the deed for the Lakewood property and the Hanford mortgage, and that with the assistance of the Hanford mortgage and the deed of the Lakewood property he could use the notes and get the money for your business purposes? A. Yes, sir.

Q. And you are sure that that conversation took place? A. Yes, sir.

Q. Do you remember the details of it accurately? A. Just as I have stated in my affidavit.

Q. I say, you remember them accurately? A. Yes, sir.

Q. There cannot be any doubt about any part of it? A. Not at all.

Q. And he then assigned the stock to you, did he not? A. He did not.

Q. He did not? A. No, sir.

Q. You testified in the case of Richards vs. Shaw that he did, did you not? A. It is so long ago I couldn't tell without having my testimony read to me.

Q. Did you testify in Richards vs. Shaw that he assigned the stock to you, but it was left at the Bank—do you remember that? A. I don't remember it. If I testified to it, it will state so there.

THE VICE CHANCELLOR: The witness wants you to read the testimony.

Q. Did not you testify in the case of Richards vs. Shaw as follows (p. 121): "I gave Mr. Hogencamp two twelve thousand dollar notes, to the best of my recollection, secured by a mortgage which I gave him then on the Lakewood property and the mortgage which I had of Hanford's on the undivided one-half of the stable. The stock was assigned to me, but left at the Bank." Did you testify to that? A. That is my testimony.

Q. Is that true? A. I was mistaken.

Q. You were mistaken? A. Yes, sir.

Q. With respect to the assignment of the stock to you? A. Yes, sir.

Q. The stock was not assigned to you at that time? A. No, sir.

Q. Were you mistaken with respect to any other part of that statement? A. I think not. My recollection is I merely gave him the two notes at that time.

Q. Were you mistaken in this particular—"I gave Mr. Hogencamp two twelve thousand dollar notes, to the best of my recollection secured by a

mortgage which I gave him then on the Lakewood property and the mortgage which I had of Hanford's on the undivided one-half of the stable"—is that right? A. I was mistaken as to the date of the delivery.

Q. The date of the delivery of what? A. Of the mortgage on the Lakewood property and the assignment of the Hanford Mortgage.

Q. Then you were wrong on that? A. I was mistaken as to the date.

Q. When did you look at the date of those mortgages last? A. Well, I looked at them ever since the last trial, you might say.

Q. You looked at them last night, didn't you? A. No, sir.

Q. Then you knew the date of the mortgages when you testified yesterday, did you?

THE VICE CHANCELLOR: The date of what mortgages?

MR. LANE: The date of the mortgage and the date of the assignment, when he testified yesterday. (To the witness) Did you?

A. I have known them for some time, yes, sir.

Q. And you had them in mind when you testified yesterday? A. I didn't have it out of my mind, because I have always known it since the last trial.

Q. Then, as a matter of fact, your testimony, when you stated in the case of Richards vs. Shaw that you gave him the two twelve thousand dollar notes secured by the mortgages, was not true at that time? A. It was true regarding the notes, but I erred in the time of the assignment and making of the mortgage.

Q. And your testimony yesterday that you

secured the notes with the mortgages was not true, was it? A. It was true. I did not testify when I secured him.

THE VICE CHANCELLOR: The witness's testimony yesterday was this: Speaking with respect to this interview and what Hogencamp said to him, the witness said, "He," (Hogencamp) "says. 'You have a deed to the Lakewood property here in the Bank, you also have a mortgage from Hanford on the undivided one-half of the stable property: I would like to have you give me two notes for $12,000 each and secure the notes by a mortgage on the Lakewood property for $12,000, and an assignment of the Hanford mortgage for a like amount. I can then use your notes in connection with those mortgages, and you can use the stock to borrow money outside, which I cannot use in the Bank.'" I do not see any contradiction between that and his most recent testimony correcting the testimony in Richards vs. Shaw. This (referring to the extract of the testimony just quoted) does not intimate that at that time he gave him the mortgages.

Q. Then you did not give Mr. Hogencamp the mortgage at that time, nor the assignment? A. I did not.

Q. Then you did not give what Mr. Hogencamp wanted? A. Mr. Hogencamp says to sign those notes "and we will fix the other matters up later," which I did whenever he told me.

Q. Then Mr. Hogencamp at that time merely got the notes? A. That is all he got at that time.

By the Vice Chancellor:

Q. Well, what did he have there at that time besides the notes? A. He had the deed of the Lakewood property; he had the mortgage of Hanford's on the undivided one-half of the Rink Stables property in Jersey City.

Q. Running to you? A. Running to me.

By Mr. Lane:

Q. Neither of which he could use? A. No, sir.

Q. They were left there simply by you for deposit? A. They were merely left there originally for Mr. Hogencamp to care for for me.

Q. You knew he could not use them? A. Well, I suppose if he wanted to use them he would fix them so he could.

By the Vice Chancellor:

Q. Oh, no, you knew he could not use a deed and a mortgage running to you? A. Yes, sir.

By Mr. Lane:

Q. You did make an assignment of the Hanford Mortgage on the 1st of September, 1900, and you did make a mortgage on the Lakewood property on the 1st of September, 1900—now, how did you come to make them at that time? A. Because Mr. Hogencamp requested me to.

Q. Well, let us have the conversation that took place then? A. I went in the Bank, and as my recollection is, Mr. Hogencamp got the deed of the Lakewood property and he got the mortgage given to me by Hanford, and told me to take them over to Traphagen, who was counsel for the Bank, and have him draw a new mortgage on the Lakewood property and an assignment of the Hanford mortgage, which I did.

Q. Was that all the conversation that took place? A. That is all at that time; yes, sir.

Q. Now, prior to that time what had happened to your two twelve thousand dollar notes? A. I don't know, sir.

BY THE VICE CHANCELLOR:

Q. Were they still with Mr. Hogencamp? A. As far as I know they were still with Mr. Hogencamp.

BY MR. LANE:

Q. You had had a $24,000 note signed by Shaw before then, had you not—before September 1st, 1900? A. It would seem so from the note.

Q. Don't you remember the transaction? A. I do not remember the transaction; no, sir.

Q. I show you now Exhibit C-8, and ask you whether you remember that transaction of the giving of that note at all? A. I do not.

Q. The notes which you gave to Mr. Hogencamp dated April 23rd, 1900, were three months notes; the due date was July 23rd, or July 26th with three days' grace,—now with those facts in your mind, can you tell us anything about the delivery of that Shaw note? A. I have nothing definite in my mind other than at one time, but I couldn't state when, Mr. Hogencamp said on account of the condition I was in in New York, and of judgments which had been obtained or would be obtained, or any trouble I might get in, they might get me in trouble here regarding the deed to the Lakewood property and the mortgage of Hanford's which were in the Bank, that they might be inquired into, and at that time there was a change made, and I suppose that was the time. Now, that is the only recollection I have.

By the Vice Chancellor:

Q. What do you mean by "a change made"? A. I think he spoke something of "keeping me right" and "accommodating him," and something about Shaw; and I think that must have been the time but I am not sure.

Q. What did you do in consequence of that—did you have any part in the transaction, any personal part; did you do anything with Shaw, or with Hogencamp or with both, concerning it? A. I think Shaw merely signed the note.

Q. Well, did you see him do it; did you get him to do it; did you bring them together, or what were the facts? That is what Mr. Lane is asking. A. Why I might at that time—I cannot recall distinctly—but I no doubt at that time carried out Mr. Hogencamp's wishes to change it to accommodate him; but I have no recollection any further than the notes show.

By Mr. Lane:

Q. And that $24,000 note was for the purpose of permitting Hogencamp to get the $24,000, was it? A. I presume he used it for that purpose I don't know.

Q. You presumed so at the time it was delivered did you? A. I supposed it was for that, I didn't know.

Q. You did not give it to him for a memorandum did you? A. I did not.

The Vice Chancellor: He says he supposed the purpose the $24,000 note was created for was to let Mr. Hogencamp get money on it.

Q. Now, the stock you say remained in Hogencamp's hands until August 1901, when you

got 50 shares of stock to take to McKelvey? A. Yes, sir.

Q. That stock was loaned to you by Mr. Hogencamp? A. No, sir—oh, at that time?

Q. Was it? A. On August 12th it was known to me by Mr. Hogencamp.

Q. You took that over to New York and put it up with the Chase National Bank, or it was put up with the Chase National Bank? A. Mr. O'Callaghan and I took it over and gave it to Mr. McKelvey with my note; yes, sir.

THE VICE CHANCELLOR: Everybody has testified to that, Mr. Lane. He did take it over to McKelvey.

Q. After the note was paid, you say that McKelvey was going to sell out the stock, the equity that you had in the stock, to satisfy the balance of the claim—is that right?

THE VICE CHANCELLOR: Do you mean whether he said that?

MR. LANE: Yes.

THE VICE CHANCELLOR: I remember what he said; if you are trying to get this into the Court's mind, I can tell you accurately what he said; but if you want to contradict him on something, or show that he does not remember, I suppose you can take the time to do it.

A. I said this: About the time that note which I had given McKelvey of $6,000 with 50 shares of the Stock of the Second National Bank as security became due, a day or a day or two after that date Mr. Hogencamp sent me over to see McKelvey to see what had been done about the note and the stock, and McKelvey told me he had

paid the note, taken the note and stock, and had them in his possession—in fact, showed then to me and said that the New York & Batavia Wood-Working Company were going to hold that stock, as they saw it was in my name, and thought I owned it, and by reason of my owing a balance on the judgment they were going to try and get more money out of that stock. I said "Mr. McKelvey, I don't own a dollar's worth of that stock," that while it stood in my name it did not belong to me.

Q. And it was for the purpose of preventing McKelvey from selling the stock as your stock and using the proceeds over and above the $6,000, to pay the balance of the Batavia judgment, or to apply on account of that judgment, that you got these two letters from Mr. Hogencamp and Mr. Haskings—is not that so? A. No, sir.

Q. Well, why? A. I came back and reported to Mr. Hogencamp what McKelvey said, and Mr. Hogencamp then delivered me those two letters, both written by Mr. Hogencamp, and one signed by him and one by Mr. Haskings, and I took those two letters and delivered them to Mr. McKelvey personally. Mr. McKelvey says "I will send one of these to the Batavia Company or to one of the officers of it, and I will look over the other, and you call in a few days, and I will see what we can do." After that I went several times, at Mr. Hogencamp's request and at that time succeeded in doing nothing.

Q. Well, the purpose of the letters was to prevent the sale of the stock? A. No, sir; the purpose of the letters was to have Mr. Hogencamp get his stock back.

Q. This stock that you bought, or that you gave the notes for, on the 23rd day of April, 1900,

remained at the Bank as Security for the notes, did it not? A. It did not. I don't know what Hogencamp did with it.

Q. It remained at the Bank? A. I never saw the stock, only the time I receipted for it.

Q. You have no idea of the purpose for which it remained there? A. No, sir.

Q. You thought all the time that the notes were secured by the mortgages? A. I didn't know whether they were secured, or not. Mr. Hogencamp wanted the mortgage so he could use it in connection with the notes.

Q. You thought the notes were secured by the mortgages, didn't you? A. I only knew what he said; he said we might have the mortgages to use in connection with the notes.

Q. And you finally gave them to him on September 1st, 1900? A. I think that was the date.

Q. For that purpose? A. I think that is the date.

By the Vice Chancellor:

Q. That is the date. He wants to know now whether it was for the purpose of using them in connection with the notes? A. As he saw fit.

By Mr. Lane:

Q. As he saw fit? A. Yes, sir.

Q. Then you gave them to him for him to do as he saw fit with? A. Only as regards those notes.

Q. On the 20th of August 1901, it appears that Mr. Shaw signed a letter directed to Mr. Hogencamp, as President of the Second National Bank asking Hogencamp as such President to deliver to you the 100 shares of stock. Just look at that

letter and see if that refereshes your recollection as to the fact and circumstances with respect to its signing? (Showing the witness the letter referred to). A. That is Mr. Hogencamp's writing and that is Mr. Shaw's writing.

Q. Does it refresh your recollection as to the circumstances as to its signing? A. It does not, other than no doubt is was done to accommodate Mr. Hogencamp.

By the Vice Chancellor:

Q. At that time, August 20, 1901, hadn't you already taken 50 of these shares over and delivered them to Mr. McKelvey? A. Yes, sir.

Q. Well, then, there were not 100 shares there, were there? A. There were not.

By Mr. Lane:

Q. There were not 100 shares there? A. There were not.

Q. The 50 shares you took over to McKelvey was a part of the 100 shares, were they? A. No, sir.

The Vice Chancellor: Well, it was a part of the 100 shares, absolutely, because Mr. Hogencamp has testified that A-348 was part of the 100 shares he sold to this man, and in his letter to the New York man, Mr. Honeck, he says "Certificate A-348." That ties it up absolutely. If you will look at Exhibit J. B. V-9, Mr. Hogencamp who wrote the letter, having Mr. Hasking's sign it, tell Mr. Honeck, was an officer of the Batavia Wood Working Company, that he, Hogencamp, had transferred 50 shares to Denton on August 1th 1901, Certificate A-348, and that before

that Denton was not a stockholder. That is what he tells him. He identifies that specific certificate and the only evidence in this case of any stock that Mr. Hogencamp ever at any time transferred to Mr. Denton which ever became efficacious includes Certificate A-348, and, with the others, in the total makes up 100.

Q. Then it was after this stock was taken over to McKelvey that that letter was signed that appears upon the record?

THE VICE CHANCELLOR: That that letter was dated.

A. It was dated I don't know when; it was signed, I suppose, at that time.

Q. (Question repeated.) A. Yes, sir.

Q. Now, the fact that you had taken 50 shares of that stock over to McKelvey before that letter was dated does not bring back to your memory some conversation that you had with Mr. Hogencamp with respect to the signing of the letter? A. It does not.

BY THE VICE CHANCELLOR:

Q. Do you recall anything about that letter at all, and if so, what? A. I do not recall anything.

Q. Can you testify now positively whether you ever saw that letter before? A. I cannot.

Q. Can you testify postively that you never did see it before? A. I cannot.

BY MR. LANE:

Q. The 100 shares was taken by you over to the Hudson Trust Company? A. It was.

Q. And you got the $13,500? A. I did.

Q. And that went through your account? A. Yes, sir.

Q. Then you drew the check, Exhibit 13, to the Commercial Trust Company, dated May 1st, 1902, for $6,067, and on the same day, by Exhibit 14, drew another check to John J. McKelvey for $7,255? A. I did.

Q. At what time was the check, Exhibit 13, to the Commercial Trust Company, drawn with respect to the receipt by you of the money from the Hudson Trust? A. This check, drawn to the Commercial Trust Company, was drawn May 1st, certified May 1st, and delivered to the Commercial Trust Company May 1st, and the stock returned to Hogencamp May 1st.

Q. (Question repeated.)

THE VICE CHANCELLOR: The testimony shows uncontradictedly that you did not get the money from the Hudson Trust Company until the 2d of May, 1902, and he asks you when, with respect to the time that you got the money from the Hudson Trust Company, did you draw this check to the Commercial?

THE WITNESS: The day previous.

THE VICE CHANCELLOR: Those facts are all uncontradicted, Mr. Lane. Why spend time in orally examining the witness about that? You yourself have produced the checks and traced them through the banks, and have produced the officers and books of the other Trust Companies, and those facts are all uncontradicted.

Q. On what day did you receive the stock back from McKelvey? A. The morning of May 2nd.

BY THE VICE CHANCELLOR:

Q. That is the same day that you took it to the Hudson Trust Company? A. Yes, sir.

BY MR. LANE:

Q. Where did you receive it? A. I received it in Mr. McKelvey's office.

Q. How did you come to receive it? A. I took this check of $7,255, Exhibit 14, which had been certified the day before, over and gave it to Mr. McKelvey, and McKelvey gave me those 50 shares of stock. I came back to the Second National Bank. Mr. Hogencamp gave me the 40 shares and the 10 shares certificates which I left with him the day before, and I went to Hoboken with them.

Q. Then the McKelvey transaction was for your benefit, wasn't it? A. Mr. Hogencamp received the funds, except what was paid McKelvey on account of the judgment.

BY THE VICE CHANCELLOR:

Q. Well, wasn't that for your benefit? A. Yes, sir; indirectly.

BY MR. LANE:

Q. The $6,000 loan you made at the Commercial Trust Company went for your benefit, didn't it? A. It went to Mr. Hogencamp, and was disbursed afterwards by him.

Q. For your benefit? A. Somewhat.

Q. Didn't you know it was to be used for that purpose? A. I did not.

Q. You did not think he was going to use his funds for your purposes? A. I did not.

Q. What did you think he was going to use it for? A. I don't know.

Q. You had no idea what he was going to use it for? A. I did not.

Q. The $13,500 borrowed at the Hudson Trust Company was used for your benefit? A. The checks show how it was disbursed.

Q. It was used for your benefit, wasn't it? A. Not wholly, no; it was for Mr. Hogencamp's benefit indirectly.

Q. The $3,000 loan that Hogencamp got from McKelvey was to be used for your benefit, alone wasn't it? A. I didn't know what it was to be used for.

Q. You did not know whether it was to be used for your benefit or for Hogencamp's benefit? A. I did not, no, sir.

Q. In the case of Richards vs. Shaw you testified that none of the proceeds of the stock were used for your benefit, did you not? A. Yes, sir.

Q. And that was a mistake? A. I don't consider it was. It was used for Mr. Hogencamp's benefit eventually,—used through me.

Q. Was the Batavia Wood Working Company matter any concern of Mr. Hogencamp's? A. It would seem it was in this way,—that he did not want the judgment recorded here against me, that it might upset the arrangements in which Mr. Hogencamp was engaged.

Q. You were protecting the man who was advancing you money, weren't you? A. Protecting Hogencamp.

Q. Well, he was the man who advanced you money? A. He advanced money, there is no question about that.

Q. And you think it was for his benefit because he paid off obligations of yours which might disturb his security? A. That is the idea.

Q. Do you remember when the note of $24,000 was increased to $25,000 and split into two notes, one of twelve and one of thirteen thousand? A. I do.

Q. That transaction took place in August 1902, did it not? A. I think so.

THE VICE CHANCELLOR: Now, that is the note of Shaw, that you are speaking about?

MR. LANE: The note of Shaw.

THE VICE CHANCELLOR: The $24,000 note was dated on the 23rd of July, 1900.

MR. LANE: I will withdraw the question for the moment, and will ask another question:

Q. It appears, Mr. Denton, that the mortgage on the Lakewood property was recorded upon the 22nd day of August, 1901, and that the assignment of the Hanford mortgage was recorded upon August 22nd, 1901, and that the date of this letter from Shaw is August 20, 1901, and that, as a fact, you actually took the stock in August 1901: Now, with those facts before you, is your recollection refreshed as to the substitution of those mortgages for the stock? A. It is not.

Q. And you cannot tell us why the mortgage and assignment were recorded upon the 22nd day of August, immediately after that letter? A. I cannot. That was a matter left entirely with Hogencamp.

Q. Now, when the whole sum was increased the $25,000 of notes were split up, one for twelve and one for thirteen thousand will you tell us what took place then?

THE VICE CHANCELLOR: That is, Shaw's notes?

MR. LANE: Shaw's notes. That is what I am referring to.

THE VICE CHANCELLOR: But you did not say so; you were just talking about his own notes. Better keep it straight.

Q. When the indebtedness was increased to $25,000 and the Shaw note of $24,000 was split up so there were two notes, one of $12,000 and one of $13,000, signed by Shaw, tell us what took place then, how it came to be done? A. Well, the Bank or Mr. Hogencamp wanted the matter changed in that shape, and wanted me to go up and see Shaw about it.

Q. Why did he want it changed? A. He didn't say.

Q. No reason for it? A. Well, he spoke merely in connection with it—I think the conversation started regarding the overdrafts which Shaw had there, and he wanted it fixed in some shape, and wanted to know if I couldn't get Shaw to fix it in that shape to accommodate him. I told him I didn't know, I would go and see Shaw.

Q. In what shape? A. Well, he wanted this mortgage changed, and wanted a mortgage on all the property, and all that.

Q. Tell us exactly what he said and what you said? A. We were in the bank, and Hogencamp says "This matter of overdraft of Shaw's is in bad shape, and never has been straightened up, and I would like to have you go up and see if Shaw won't change this mortgage of Hanford's and give me a mortgage on the entire Stable." He said, "It is a matter between you and I, and won't affect Shaw." I told him I would go and see Shaw, and see what he would say, and I went up and met Shaw at the stable, the Rink Stable,

and told him what Mr. Hogencamp wanted, and he said he wouldn't do it. Finally we went to the Bank, Mr. Shaw and I, and we talked it over with Mr. Hogencamp, and Mr. Shaw told him, in my presence, that it was merely to straighten up matters between him and I regarding the stock transaction, and that it was only to straighten up regarding the overdraft, and Shaw would only be held for $1,000; and Shaw said, "If that is the case I am willing to accommodate you, and then the papers were arranged."

BY THE VICE CHANCELLOR:

Q. What was said about changing the note, which Shaw had then in the bank,—about the $24,000 note, or about two notes for twelve thousand and thirteen thousand dollars to be signed by Shaw? A. My impression is there was two notes; I don't remember much about that. I don't remember much about it merely what was spoken about the overdraft and the mortgage.

Q. Was there anything at all said in your hearing at that time, that you recollect, about Shaw's having then in the bank a $25,000 note? A. No, sir; not to my recollection.

BY MR. LANE:

Q. Well, you knew as a fact he did have, didn't you? A. I did not until, that note showed up. I had forgotten about it.

Q. You thought they were two of your notes, up to that time? A. I supposed my notes were left there. I never knew what became of them. I never received them.

BY THE VICE CHANCELLOR:

Q. Having now told us that you remember perfectly that in August of 1902 you and Mr.

Hogencamp and Mr. Shaw were together at the bank, and that Mr. Shaw had then overdrawn his personal account at the bank, and that Mr. Hogencamp had expressed a desire to have Mr. Shaw make a mortgage on the whole of the Rink Stable, upon which, through the Hanford mortgage, Hogencamp then had a lien upon one-half of it; and also having told us that he wanted Shaw to make notes, one of $12,000 and one of $13,000, was it your understanding that, as to $24,000 of those notes, they were to take the place of your two $12,000 notes that you then had in the bank? That is what Mr. Lane is asking? A. I did not give the matter much thought, outside of the advisability of Shaw giving a mortgage on the entire stable when Hogencamp only had a mortgage on a half. That concerned me more than my notes; I didn't think about them.

By Mr. Lane:

Q. Well, what notes were they going to secure? A. Well, I suppose it must have been my notes; I did not know about any other notes.

Q. Don't you know as a fact, that it was the notes that had been given for the stock? A. I couldn't say, as regards that, what I thought about it.

Q. Well, what other notes could it have been? A. I don't know of any other notes I had in the bank.

By the Vice Chancellor:

Q. Well, what other purpose could have been served by Mr. Shaw giving a note for $12,000 and a note for $13,000, and a mortgage, excepting so far as he, Shaw, personally was concerned, to fix up this matter of overdraft, and so far as you and Hogencamp and Shaw were concerned, to serve

the same purpose that your two $12,000 notes had theretofore served? A. They would serve the same purpose.

By Mr. Lane:

Q. They were in the bank then, weren't they? A. I suppose so.

Q. Didn't you know it? A. I didn't know it, because I never had them, and never received them. I did not know where they were.

Q. The Shaw mortgage of $13,000 was given as a substitute for the $12,000 Hanford mortgage, was it not? A. I think that was the understanding.

Q. It was the understanding at that time that that should be given as a substitute, wasn't it? A. I think so, sir.

Q. And the Hanford mortgage was then to be delivered up? A. There was nothing said about that.

Q. Was not that your understanding? A. Nothing said about it.

Q. Was that your understanding? A. I did not have any understanding about it.

Q. You thought that you were going to give a mortgage on the whole stable property and still keep a mortgage on a half?

The Vice Chancellor: I do not think you mean that question.

Q. You thought you were going to give a mortgage on the whole stable property and let Mr. Hogencamp retain the mortgage on the one-half also? A. That is what Mr. Hogencamp wanted.

Q. You borrowed money at some times from Mr. Hogencamp personally, didn't you, without the intervention of the bank? A. I never paid

much attention where the money came from. All my dealings were with Mr. Hogencamp. I gave notes in different shapes, no doubt I did.

Q. On the 19th of July, 1901, it appears that you gave a note, payable to your own order, which I now show you, Exhibit C-15; what was the purpose of that? A. I do not remember.

Q. Do you remember that transaction at all? A. I do not.

Q. Do you remember that you got $13,000 then? A. I do not remember that any more than the books show.

Q. Have you your bank pass book for that time? A. Yes, sir.

Q. You got the $13,000 didn't you? A. No doubt I got it.

Q. And you did not get it through a discount from the bank, did you? A. I think so. I couldn't tell you, only what it says there.

THE VICE CHANCELLOR: And by "there" he is referring to what he sees on the bank pass book.

Q. A bank pass book always indicates in it whether it is a withdrawal or a deposit of funds, does it not? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. Is not that the custom, he means? A. Yes, sir.

Q. And so far as appears on the face of your bank pass book, that was a deposit of funds on that day, wasn't it, on the 20th of July, 1901? A. Yes, sir.

BY MR. LANE:

Q. I show you a check dated July 19, 1901,

Exhibit 16, a check from Hogencamp to you, endorsed by you, and ask you whether that is the check that you received for this note? A. I presume it is.

Q. Have you paid that note? A. That I don't know.

Q. You do not know whether you have paid it or not? A. I do not.

Q. You never made any payments on account of it particularly? A. I have no recollection.

Q. Well, you never went to Mr. Hogencamp and said, "Mr. Hogencamp, here is a thousand dollars to apply on this particular note," did you? A. Not to my recollection.

Q. And you have never asked for this note? A. No, sir.

Q. And you have forgotten that you ever delivered it? A. That is about the size of it.

Q. At the time you delivered it you did owe Mr. Hogencamp $13,000, didn't you, or you would not have delivered it? A. I don't know whether I owed it to him or not through that note; it might have been disbursed through these properties; I don't know that.

Q. Do you know the purpose for which you borrowed the $13,000? A. None other than it was furnishing funds for the completion of the building. That is all I know about it.

Q. Well, can you recollect how it is that this transaction took place with Hogencamp personally and not with the bank? A. I cannot recall any further than the book shows.

Recess until 2 P. M.

Afternoon Session.

Hearing of the cause resumed at 2 o'clock P. M.

HENRY M. DENTON, recalled.

CROSS EXAMINATION RESUMED BY MR. LANE:

Q. Mr. Denton, on the 20th day of December, 1900, you received from Mr. Hogencamp the check which I now show you, Exhibit C-41, for $24,000 did you not? A. That is my endorsement; yes, sir.

Q. And it went into your account? A. Yes, sir.

Q. Do you remember the purposes for which you obtained that loan? A. I do not.

Q. Do you remember the circumstances with reference to it? A. I do not.

Q. Have you any recollection at all about it? A. I have not.

Q. Do you know whether at that time you sold to the bank a mortgage? A. I have no recollection.

Q. And do you remember that you ever sold the Second National Bank a mortgage? A. I do not.

Q. And any transaction of that kind, if it happened, is now entirely out of your mind? A. It is.

Q. Do you remember that upon the 23rd day of July, 1900, you borrowed from the bank $16,000? A. My book states so; yes, sir.

Q. Do you remember the details with respect to that? A. I do not.

Q. Or the purpose for which the loan was made? A. I do not.

Q. You have absolutely no recollection about it? A. No, sir.

Q. At the time in March, 1900, at the time you sold the property in—where was the property that you got $112,000 from? A. 125th Street and Lenox Avenue, New York.

Q. That is not the bakery property, is it? A. No, sir.

Q. At the time you sold that property and received $112,000, and paid off all your loans to the bank you were in fairly good circumstances then, were you not? A. No, sir.

Q. What indebtedness did you have? A. I had obligations due and maturing which would use more than I had in the bank, more surplus than I had.

Q. Did you figure it out at that time? A. I did.

Q. With Mr. Hogencamp? A. Mr. Hogencamp knew about that. I don't know as I figured it with him at that time.

Q. How did Hogencamp know about it? A. I used to tell Hogencamp everything about my affairs.

Q. At that time? A. Yes, sir.

Q. And weren't you at that time desirous of buying stock in the Second National Bank? A. I was not.

Q. The stock was transferred to you at a valuation of $240, wasn't it? A. Mr. Hogencamp placed that price on it; yes, sir.

Q. Well, that was the price that was placed on it, wasn't it? A. The price he placed on it.

Q. Well, that was the price you gave your notes for? A. Yes, sir.

Q. And it was the price at which the stock had,

around that time, been sold for, wasn't it? A. That I know nothing about.

Q. Did not Mr. Hogencamp tell you that just at that time, within a few days of the time you bought the stock, or of the time you gave your notes, that Mr. G. B. Wilson had bought a block of the stock, one or more, at a valuation of $235? A. He certainly did not.

Q. And you did not know that Mr. Wilson had bought stock about that time for $235? A. I knew nothing about it.

Q. How did Mr. Hogencamp come to place a valuation of $240. on the stock? A. I don't know.

Q. You and he had no conversation about it at all? A. None whatever.

Q. And I understand that Mr. Hogencamp said to you at the time the stock transaction was put through that you could use the stock for the purpose of borrowing the money outside, is that right? A. He said I could use the stock for him for the purpose of borrowing money.

Q. Not for yourself? A. No, sir.

Q. But for him? A. Yes, sir.

Q. Then when you said yesterday that he said "I can then use your notes in connection with those mortgages, and you can use the stock to borrow money outside, which I cannot use in the Bank," he referred to the use by you for him of the stock, and not for yourself? A. Yes, sir.

Q. You stated this morning that you have no knowledge of the purpose for which a check of $1,674.88, Exhibit 11-J, was used, is that not so? A. Yes, sir.

Q. Now, with reference to the notes attached to it, cannot you tell us for what purpose that was used? A. Only what the figures state.

By The Vice Chancellor:

Q. Well, as I understand it, you do not dispute the fact that the check in question was used to take up the note in question? A. Oh, no.

Q. What you mean is that you do not know what the money that was raised on the notes was used for,—is that what you mean? A. That is right.

By Mr. Lane:

Q. Then you have no knowledge, no recollection at the present time of the note dated August 6th, 1901, for $1,670.21 to the order of William Hogencamp? A. Nothing beyond my signature.

Q. You did borrow that money from Mr. Hogencamp, did you not? A. It seems so.

Q. Can you tell us why the check which you testified this morning went to Mr. O'Callaghan was drawn to your order for $247.59, Exhibit 11-A? A. I cannot.

Q. You say that had nothing to do with your transactions? A. I don't say that.

Q. Well, has it? A. I don't know.

Q. Well, you said this morning, if I recollect correctly, that it was a bill that Mr. Hogencamp owed Mr. O'Callaghan. A. I do not recollect of having said that.

Q. Then you do not know what purpose that was delivered to Mr. O'Callaghan for? A. I know it went to O'Callaghan, that is all I do know.

Q. And presumptively it went to Mr. O'Callaghan for some business of yours? A. I couldn't tell that. He was doing business for Hogencamp evidently, and I cannot tell you about that.

Q. Doesn't the fact that the check is drawn to your order and by you endorsed indicate that to you now? A. Not necessarily.

Q. You were using Shaw's name in New York in reference to your New York transactions, weren't you? A. With those two Stroh notes; that is all I have any recollection of,—the Stroh & Huber notes.

Q. At the last trial, in the case of *Richards vs. Shaw*, you testified that you had not used Shaw's name at all in New York, did you not? A. I do not remember. Whatever I testified to is of record.

Q. Who was Sarah S. Horton? A. My sister-in-law.

Q. And you knew that she got a payment of $32,821.33 out of the proceeds of the Marx sale, did you not? A. Yes, sir.

Q. And was that check drawn by your order? A. No, sir.

Q. How did it come to be drawn? A. Mr. Hogencamp drew it and gave it to Mrs. Horton because it was due her.

Q. Mrs. Horton had a mortgage on that property? A. Yes, sir.

Q. You knew the time it was drawn, didn't you? A. Yes, sir.

Q. And did you take the check and deliver it to Mrs. Horton? A. I did not.

Q. Do you remember how Mrs. Horton got it? A. Mr. Hogencamp delivered it to her personally.

Q. Where? A. In the Bank.

Q. Were you there? A. Yes, sir.

Q. You were? A. Yes, sir.

Q. And the balance of the Marx purchase price was used to pay certain indebtedness of yours to the Bank, wasn't it? A. I think not.

Q. What purpose was it used for? A. I kept no track of it, never knew.

Q. You knew that Mr. Hogencamp had received about $90,000, didn't you, from that purchase? A. From hearsay.

Q. Well, you were present at the Bank at the time the Horton check was drawn? A. I was there when he gave Mrs. Horton the check; yes, sir.

Q. And was not that sale discussed at that time? A. It was not.

Q. Was not the amount that Mr. Hogencamp had received discussed at that time? A. It was not.

Q. Do you mean to tell us that he did not tell you at that time what moneys he had in hand? A. I certainly do.

Q. And that he did not tell you at that time that he had drawn a check to the Bank for fifty-one thousand and some odd dollars to pay what you owed the Bank? A. He did not tell me that.

Q. And you made no attempt to find out what had happened to the difference between the amount that he gave Mrs. Horton and the amount that he received? A. I did not.

Q. You knew that the amount he received was a large amount, didn't you? A. From hearsay.

Q. At that time? A. From hearsay; yes, sir.

Q. And what did you suppose he used it for? A. Why, I supposed he was reimbursing himself for the moneys he expended there.

Q. And the Bank? A. I don't know about the Bank. I did not know where he got the money, and I did not look after that part of it.

Q. You supposed all along he was getting moneys from the Bank, didn't you? A. I didn't know; I didn't ask about it.

Q. Did you know that you had, at that time,

a debt in the Bank, in Redfield's name, for some twenty-three thousand dollars? A. I did not.

Q. Did you know that you had a debt at that time on the Redfield bond and mortgage for some twelve thousand five hundred dollars? A. I did not.

Q. Did you know what debts you had to the Bank at that time? A. I did not suppose I had any.

Q. You did not think you were indebted to the Bank at all? A. No, sir.

Q. You did not think that any part of this purchase price should be used to reimburse Mr. Hogencamp or the Bank? A. I do not exactly understand that question.

Question repeated.

A. I supposed Mr. Hogencamp, of course, that the moneys he advanced he would get out of the sale of the property; but as for his getting money from the Bank, or where he got it, I did not inquire into.

Q. Well, then, you thought you owed Hogencamp? A. I didn't know who I owed.

Q. You owed somebody? A. Hogencamp was looking after it. I didn't know where I came in it.

Q. You owed somebody? A. I didn't owe anybody. I was merely overseeing the matters for Hogencamp. He was handling the affairs.

Q. The property at that time was in Redfield's name, wasn't it?

THE VICE CHANCELLOR: Before the sale, do you mean?

MR. LANE: Before the sale.

A. No, sir.

Q. Whose? A. Charles H. York's.

Q. Which property is that now, 149th Street? A. 149th Street and Seventh Avenue.

Q. Do you remember, on January 30th, 1902, drawing a check, Exhibit C-37, to the order of R. L. Shaw (showing witness the exhibit referred to)? A. I do not remember it; no, sir.

Q. It is your signature, is it not? A. Yes, sir.

By The Vice Chancellor:

Q. Whose handwriting is the body of the check in? A. Mr. Hogencamp's.

By Mr. Lane:

Q. You do not remember the transaction at all? A. I do not.

Q. Or the purpose for which that check was drawn? A. Only what has come out in Court since.

Q. Did you remember at that time? A. At that time I didn't remember anything concerning that check.

Q. But from what has come out in Court since is your memory refreshed? A. Yes, sir.

Q. Let us have the refreshed recollection. A. That paid an overdraft of Shaw's of about $900; I think it was a little less.

Q. Do you mean it paid an overdraft of Shaw's, or do you mean it prevented an overdraft of Shaw's? A. The overdraft had been made previous to that time, I understood.

Q. Who told you that? A. Mr. Hogencamp gave me instructions to tell Shaw, in November, to proceed and overdraw his Bank account not to exceed a thousand dollars, to repair the stable.

By The Vice Chancellor:

Q. November of what year? A. 1901.

THE VICE CHANCELLOR: What is the date of this check?

MR. LANE: January 30, 1912.

BY MR. LANE:

Q. And you think that the overdraft was before this check was delivered. A. I know it was.

Q. You knew that Mr. Hogencamp was carrying for you, in the Bank, certain accounts, didn't you? A. I did not.

Q. You knew you were drawing checks on the Bank that were being honored? A. I did.

Q. Out of what funds did you think they were being honored? A. I didn't know. I supposed, of course, he had an account; I didn't know anything about it.

Q. You never heard of the Trustee Account? A. I did not.

Q. You never heard of the Rent Account? A. No, sir.

Q. You never heard of the Attorney Account? A. No, sir.

Q. Never heard of either of them? A. No, sir.

Q. Do you know when you started to give the rents to Mr. Hogencamp? A. Well, I started, as I testified before, late in 1900, or early in 1901; but I started in 1903 to turn everything complete to Hogencamp.

Q. You started with the rents when, 1901? A. Well, I should judge 1901; I am not sure about it.

Q. Now, had you no discussion at that time with respect to what Hogencamp should do with those moneys? A. The discussion merely was that I was to turn everything in to Hogencamp, and disburse it through him.

Q. And there was no discussion with respect to how those moneys were going to be kept in the Bank? A. No, sir.

Q. Did you think they were going through Hogencamp's personal account? A. I did not know anything about it after my account was closed in December, 1902. Before that I saw that some of them went through my account, of course; but after that I knew nothing about it.

Q. And you made no effort to find out? A. I did not.

Q. Until the commencement of the Shaw suit? A. Well, I heard something about it in the Richards-Shaw suit.

Q. I mean the Richards-Shaw suit? A. Yes, that is the first I heard of it.

Q. I show you check dated March 14, 1903, Exhibit C-5, for $807.82, and ask you if that is your signature? A. It is; yes, sir.

Q. That is drawn to the order of Interest Account? A. Yes, sir.

Q. Do you know what that was drawn for? A. I do not.

Q. Have you any idea? A. I have not.

Q. Did you have at the time? A. I did not. I merely signed the check because Mr. Hogencamp asked me to.

Q. You signed any check that Mr. Hogencamp would show you? A. That is about the size of it.

Q. Without finding out what it was for? A. I did not look into it at all.

Q. You saw, at the time you signed that check, that it was drawn to Interest Account, didn't you? A. I certainly must.

Q. Whose interest were you paying? A. I didn't know.

Q. It did not interest you to know? A. It did not.

Q. The checks which I show you, C-27, C-28, C-29, C-30, C-31, C-32, and C-33, to the Hudson Trust Company, all signed by you, you knew were being taken out of your funds,—that the payment was being provided for out of your funds, didn't you? A. I supposed they were being taken out of the funds, of course. I signed the checks, but I did not know what funds they were. I knew it was being taken out of funds.

Q. That belonged to you? A. Didn't belong to me.

Q. From funds not belonging to you then? A. Well, they were deposited with Mr. Hogencamp.

Q. Well, did they belong to you, or didn't they? Did you have any interest in them? A. At that time I was conducting business for Mr. Hogencamp in finishing these buildings.

Q. Did you have any other interest in the funds at that time? A. I had no interest in anything that might come out unless Mr. Hogencamp wanted to give it to me.

Q. Then you depended entirely upon Mr. Hogencamp's good nature in giving you something? A. I depended upon Mr. Hogencamp's honesty.

Q. Then you positively had no interest in the funds, and you did not consider they belonged to you, is that right? A. I considered the funds were being expended as Mr. Hogencamp saw fit.

Q. But they were your funds, weren't they; or were they Hogencamp's funds? A. I considered they were Hogencamp's funds to disburse as he saw fit, because I turned everything to him, and all the interest I had was the salary I was drawing for living expenses.

Q. That is all the interest you had in the funds? A. Yes, sir.

Q. Had no other interest in it? A. No, sir.

Q. And whatever Hogencamp wanted to do with the balance, he could do? A. It was my understanding that Mr. Hogencamp was to straighten matters out, and after he had done that, if there was anything left, and he saw fit to give me anything, he would do it; otherwise he would not.

Q. Then the moneys represented by these checks I have shown you were to come out of those funds? A. I don't know what funds, as I have said before. I merely drew the checks and signed as he told me to, and paid no further attention to it.

By The Vice Chancellor:

Q. When you signed a check hadn't you the least conception that the amount of the check was going to be paid out of funds belonging to you? A. In this case I didn't know anything about it.

The Vice Chancellor: He had no Bank account of his own at that time, that is quite obvious, so I think the witness' state of mind is this, that he didn't know whether there were funds in the Bank that had come from the New York properties at that time or not. His understanding was that Mr. Hogencamp would take care of these checks, and the thing he is trying to tell you is that he didn't know at that time whether Mr. Hogencamp had money in the Bank some of which came from these New York properties.

The Witness: That is right.

Q. If Mr. Hogencamp did have in his hands the necessary funds, out of the properties, to meet

these checks, then they were to be taken care of out of those funds, weren't they? A. Nothing said about it.

Q. And you don't know? A. I didn't care.

Q. You didn't care? A. No, sir.

Q. I show you Exhibit C-42, check to the order of William Hogencamp for $10,000, and ask you whether you remember that transaction? A. I do not. That is my check, my writing and all that, and Hogencamp's endorsement, and that is all I know about it.

Q. You do not know what purpose that was used for? A. I do not.

Q. Or why you gave it? A. No, sir.

Q. I show you checks C-51, E, D, C, B, and A, all signed by you between April, 1902, and June, 1902, and ask you whether you know what the purpose of those checks was? A. My recollection is it was in connection with some of those New York transactions, just which one I could not state. It may have been 149th Street and Seventh Avenue, it might have been 68th Street and West End Avenue, or it might have been anything on those lines, I cannot state now definitely which.

Q. They were drawn to your order, weren't they? A. Yes, sir; and endorsed by me.

Q. And you got the money on them? A. I must have got the money. My impression is, although I won't swear positively, that that was used as a labor list. I would very often get my pay lists on about those dates, and I drew the money and paid in cash.

Q. This one of $1,062 could not have been used for a labor list, could it? A. Well, it might, yes, because sometimes the contractors there wanted

to use their money in paying off the help they employed, and they would ask me to bring over the cash instead of checks, which I frequently did.

Q. And this one for $600 might have been used for the same purpose? A. It might; yes, sir. Those contractors employ large numbers of men, and they had weekly pay lists.

Q. You had an account in the Bank at that time, hadn't you, June 20th, 1902? A. Yes, sir; I had an account there until December, 1902.

Q. And you knew that these were not paid out of your account, didn't you? A. Why, I supposed it was at the time.

Q. What account did you think they were being paid out of? A. As I have said before, I didn't know; all I knew was that Mr. Hogencamp took care of the checks.

Q. Now, you had no knowledge that Mr Hogencamp was carrying a Trustee Account? A. I didn't; no, sir; never saw the account.

Q. On April 21st, 1902, Hogencamp, Trustee, made a check to your own order for $700, and you endorsed it "H. M. Denton"—now, did you know that Mr. Hogencamp was carrying a trustee account or not? A. I did not pay any attention to it.

Q. You did not notice that signature? A. Didn't notice it at all. He just handed me the check and I endorsed it.

Q. On August 6th another check was drawn, did you notice that signature at all (showing witness check)? A. I didn't notice the signature of any check. If Mr. Hogencamp sent me a check to endorse I would endorse it Quite often he would hand it to me, and I would endorse it without looking at it. I did as he told me.

Q. You received the money on it, didn't you? I don't think so.

Q. There is no other endorsement on it. Who did get it? A. I don't know. That might be money given to me for a pay list. I cannot state definitely about it.

Q. Who is John F. Niebuhr? A. He was a plasterer, had the plaster contract on the seven buildings at 149th Street and Seventh Avenue.

Q. On March 15th, 1902, Mr. Hogencamp gave a check to John F. Niebuhr for H. M. Denton for $600, endorsed by you; you do not recognize the signature on that, I suppose? A. I do now, on account of the name connected with it.

Q. But you did not recognize the signature W. Hogencamp, Trustee? A. I never looked at the signature, as I stated before.

Q. And that same thing applies to the check dated March 15th, 1902, Exhibit 52, D; check March 31st, 1902, Exhibit 52, E; check April 12th, 1902, Exhibit C, 52, F; check April 12th, 1902, Exhibit 52, G; check April 12th, 1902, Exhibit C, 52, H; all of which are signed by Wm. Hogencamp, Trustee, to your order, and each one of them endorsed by you; and you say that you never paid any attention to those signatures? A. I say I never paid any attention to the checks, how they were signed. If I would go into the bank and Mr. Hogencamp would say, "Endorse this," I would endorse it; and if I took a pay list and he would sign a check, I would endorse it, and quite often make it payable to the people to whom it was going to. That is the only way I can refresh my memory as to where these funds exactly went. By any of these endorsements I can tell you just who got the money.

Q. What I am interested in knowing is whether

you cannot say now, after seeing these checks, drawn to your order by Wm. Hogencamp, Trustee, that you did know that Mr Hogencamp was carrying a trustee account? A. I can only say what the checks now show, that he had a trustee account. That is all I know about it.

Q. But you did not know it at the time? A. I certainly did not.

Q. You testify that the sale of the 149th Street property was consummated without your knowledge? A. I do.

Q. And that a man named Marx bought it? A. Yes, sir.

Q. Who was Marx? A. He was a real estate operator in New York.

Q. You knew him, didn't you? A. Well, slightly.

Q. Didn't you introduce him to Mr. Hogencamp? A. I certainly did not.

Q. You had nothing to do with getting Hogencamp and him in touch? A. Nothing whatever.

Q. Do you know who did introduce him to Hogencamp? A. Well, I know the broker that got the commissions—I didn't even know him.

Q. Who was the broker? A. Well, I have forgotten. I know Mr. Hogencamp told me afterwards who he was. I didn't know him. I was never introduced to him.

Q. You had nothing to do with him? A. Nothing whatever. I was trying to sell to another party.

Q. I show you check of H. M. Denton, to the order of Cash, dated March 29th, 1902, for $1,700, marked Exhibit C, 53, and ask you whether you recollect that check? A. Nothing more than that it is my check.

BY THE VICE CHANCELLOR:

Q. Is it your check? A. My check, drawn to Cash; yes, sir.

BY MR. LANE:

Q. Do you know the purpose for which that money was used? A. I certainly do not.

Q. Do you know where you got the money on it? A. I do not.

Q. Do you know that on the 30th day of January, 1902, you had, in the Second National Bank of Jersey City, a note for $1,850? A. January 30th, 1902?

Q. Yes. A. After December, 1902, I lost track of everything.

Q. Well, this is January, 1902? A. Oh, excuse me; I probably would have known from my pass book; yes, sir.

Q. I am showing you a note, Exhibit C, 61, and I ask you whether you recognize the note, and if you can remember the transaction? A. I cannot remember the transaction. I do not deny it is my note, discounted by me.

Q. A note discounted at the bank? A. Yes, sir.

Q. And does the same thing apply to the note attached to Exhibit C, 60, that you cannot remember the transaction, but know it is your note? A. I can remember that transaction.

Q. Well, let us have your recollection of that transaction. A. That is the note that took care of a note given by Stroh & Huber for $1,250, drawn by me to Shaw's order, October 19th, 1901, and endorsed by Shaw, and endorsed by Stroh & Huber. That is one of the notes where they required an endorser, and Mr. Hogencamp told me to have Mr. Shaw endorse the note, and when it was due he would care for it.

Q. And you remember that transaction? A. I remember that from the endorsement.

Q. Because the two notes happened to be attached together? A. Because the check and the Stroh note happened to be attached together.

Q. I show you Exhibit C, 59, for $1,173.98, a check of W. Hogencamp, Trustee, to which is attached a note for $1,173.98, and ask you whether you remember that transaction? A. Only through the name Anderson, that is all. He was the architect on those buildings.

BY THE VICE CHANCELLOR:

Q. At 149th Street and Seventh Avenue? A. At 149th Street and Seventh Avenue; yes, sir.

BY MR. LANE:

Q. Do you remember you testified in the case of Richards vs. Shaw as follows, on page 126 of the record, and on page 127: "Q. Well, how was it that you purchased at that time, from Mr. Hogencamp, this stock--what was the true transaction about it? A. Well, prior to that I had been a large operator in New York in real estate, and had been helped, through the Second National Bank and Mr. Hogencamp, with large amounts of money; and on April 2d, 1900, I paid the bank with a check to Mr. Hasking's order $57,411.09, to the best of my recollection, which paid the indebtedness to the bank. After that this stock was assigned to me by Mr. Hogencamp, to assist Mr. Hogencamp, as I understood; he wanted to raise some money, and he owned this stock, and he couldn't borrow from the bank and he could borrow on my notes with these mortgages as security, and I could also use the stock to make any loans on—in other words, I was trying to assist Mr. Hogencamp"—did you testify to that? A. I did, sir.

Q. Is that the truth as you now remember the transaction? A. Excepting as to the assigning of the stock, in which I was mistaken. It was not assigned to me at that time; but that had passed my recollection. Outside of that, that testimony is just as I wish to leave it.

THE VICE CHANCELLOR: Well, even there from what you read that he testified to, it seems to me he says when it was assigned—he says, "After that it was assigned," after the time that he signed the notes.

MR. LANE: Well, he meant after the time that he paid the $57,411.09.

THE VICE CHANCELLOR: Well, it was after that.

MR. LANE: It was a few days after.

THE VICE CHANCELLOR: I don't care if it was two minutes after, it was after the signing of the notes. He does not say it was at the time he gave the notes that the stock was assigned to him.

MR. LANE: Well, in connection with the other matter——

THE VICE CHANCELLOR: Oh, that is another matter. I have just said that what you have just read does not contradict what he has just recently said.

Q. And did you testify, on page 135 of the record: "A. At the time I commenced getting in trouble I took the deed for the Lakewood property and the Hanford mortgage down there and left them in the bank; I did not owe the bank a dollar at that time. But afterwards I borrowed on them to pay for this stock. I borrowed on the Lakewood property by giving a mortgage to Hogencamp for twelve thousand dollars, and as-

signing this mortgage for twelve thousand dollars on half of the stable"? A. I testified to that, which was a mistake. I merely testified that way because Mr. Hogencamp said he had borrowed it. I think that came out in his testimony. I have forgotten. I did not know what was done with the notes. I certainly never borrowed on them.

Q. Did you testify on page 145 of the record: "Q. Don't you know that all the discounts you were getting were discounts made for you by the Second National Bank? A. Well, of course I knew nothing about it, but I supposed so. Q. You supposed so? A. Yes,"—did you testify to that? A. If it is there, I did.

Q. Well, do you remember whether you testified to it? A. I do not remember definitely about it.

Q. Is it the truth? A. Well, my transactions were with Hogencamp. Of course I supposed the money was coming through the bank, but I didn't know anything about it, other than what my bank book showed.

Q. Did you testify on page 120 of the record: "Q. They" (referring to the two notes of $12,000 dated April 23d, 1900) "were your notes? A. Yes, sir, to my best recollection, they were. Q. Was Shaw on them at all, or don't you know? A. I don't really know; I don't think he was. Q. Go on. A. At the time I got this stock from Mr. Hogencamp I did it, as you might say, to assist Mr. Hogencamp and assist myself."? A. No doubt I so testified.

Q. Is that true? A. Well, one part of it.

Q. What part of it is true, and what part of it is not? A. To assist Mr. Hogencamp.

Q. Do you want to retract the assisting yourself? A. Well, in a measure; and still I suppose

I was getting some assistance by having these properties finished up and straightened out, and the mortgages protected. I never got any benefit yet; I am hoping to get it in time.

RE-DIRECT EXAMINATION BY MR. CAREY:

Q. When you left with Mr. Hogencamp the Lakewood mortgage and the assignment of the Hanford mortgage, did you give Mr. Hogencamp any permission to make use of those two instruments, or those papers, in any other connection than with the two notes which you had given? A. I did not.

Q. And subsequently to that time did you give him any permission to use them with respect to any other transaction than in connection with the stock transaction? A. No, sir.

Q. Do you know whether Mr. Shaw got back his note for $24,000, of July 23d, 1900? A. I do not think he did. I never heard of it.

Q. You attended at the Richards-Shaw trial, did you not? A. Yes, sir.

Q. Do you recall that note being brought into court at that time? A. I think I do.

Q. And do you remember who brought it in?

THE VICE CHANCELLOR: Why waste time on that? Is it not to-day produced out of the custody of the complainants here?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: Then why waste time on it ? I do not care what this witness says about it, where my own visual organs are the best evidence of it. It was produced here on this trial by the complainants in this case. They have got to be charged with the responsibility of having

had that note right along, unless they show when it got away from them and when it got back to them.

MR. LANE: We have had it.

THE VICE CHANCELLOR: Mr. Lane makes no point of it.

Q. Did you say that Charles H. York held title to the property 149th Street and Seventh Avenue at the time it was conveyed away? A. Yes, sir.

Q. How did he come to get title to the property, do you know? A. It was transferred to him by William H. Redfield at Mr. Hogencamp's request.

BY THE VICE CHANCELLOR:

Q. Redfield bought the property in for you, did he, initially? A. I had it deeded to him, yes, sir.

Q. That was for you? A. Yes, sir.

Q. And then subsequently, your testimony now is, that Mr. Hogencamp requested you to have Mr. Redfield convey the property to Mr. York? A. Yes, sir.

Q. And you complied with that request? A. Yes, sir.

Q. Who was York? Was he a man used in your transactions? A. No, sir; he was Mr. Hogencamp's wife's cousin, and a receiving teller in the Second National Bonk.

Q. And he was a man Mr. Hogencamp used in his business transactions? A. Yes, sir.

Q. When was this, do you recollect? A. I do not recollect, any further than the transfers.

Q. And by the "transfers" of course you mean the deeds? A. The deeds, yes, sir.

BY MR. CAREY:

Q. Do you recall when York conveyed the 149th

Street property? About what time was that? A. In April, 1905, is my recollection.

Q. Can you tell about how long prior to that time York had taken title to the property? A. Not without referring to the transfers, to the deeds.

By the Vice Chancellor:

Q. Is it a very short time, or quite some time? A. Some time.

Q. Quite some time ago? A. Yes, sir.

By the Vice Chancellor:

Q. Have you anything here now which would refresh your memory as to that? A. Yes, sir.

Q. What is it? A. A copy there from the search we made at the time we went to New York.

Q. You examined the records yourself in New York, did you not? A. I did; yes, sir.

Q. Is that the memorandum to which you referred (showing witness a paper)? A. Yes, sir.

By the Vice Chancellor:

Q. From that memorandum, when do you find that Mr. Redfield conveyed the 149th Street and Seventh Avenue property to Mr. York? A. March 7th, 1905.

The Vice Chancellor: (To Mr. Carey.) Is that the date of the deed, or the date of the record, or what?

Mr. Carey: That is the date of the deed, sir—recorded on the following day.

By Mr. Carey:

Q. Have you at any time ever had Mr. York take title to property for you? A. No, sir.

Q. You were asked about the time when the

two Shore notes, one for $12,000 and one for $13,000, were given. At the time you and Mr. Shaw and Mr. Hogencamp were in the Bank together was anything said by Mr. Hogencamp about Mr. Shaw not being affected beyond the sum of one thousand dollars? A. Yes, sir.

Q. State what it was. A. Mr. Hogencamp said, in Mr. Shaw's presence and mine, that he would only be held for a thousand dollars; that the other matter was a matter between he and I and for his accommodation.

Q. And that the thousand dollars was with respect to what? A. The moneys that Shaw had used in the completing of the stable the November prior to that, as I remember. It was where he had overdrawn his account, or supposed he had.

MR. LANE: There is something that I intended to put in on the other examination that I overlooked.

THE VICE CHANCELLOR: I will permit you to ask it now.

BY MR. LANE:

Q. Did you testify in the case of Richards vs. Shaw as follows, (page 111): "Shaw went on and completed the stable and the repairs, and the amount—I don't know what he spent—as he testifies. I heard nothing more about it until the following August I was in the Bank one day and Mr. Hogencamp told me that the matter of Shaw's had not been adjusted and he wanted it fixed up in some shape, and that my matters in the Bank were in a very unsettled shape, and as there were judgments against me in New York, and more to be had probably, that I had better get them in some different shape, as they might be sued on in the State of New Jersey, and the se-

curities that were there and mortgages that were there, and one thing and another, might be inquired into; and he asked me if I couldn't get Shaw to fix it in some different shape. I told him I didn't know; and he wanted me to go up and see,"— do you remember testifying to that? A. I do.

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

Q. When did that take place, what August was that—August of 1902 or August of 1901? A. I don't remember, only what the record says.

By the Vice Chancellor:

Q. He means this: You stated in your testimony that he has read you, and which you said you gave, that you were in the bank "in August," and had this conversation with Mr. Hogencamp, as a result of which you went up and saw Mr. Shaw; now, he wants to know what August that was? A. That was August, 1902, to the best of my recollection.

By Mr. Lane:

Q. That was at the time that the mortgage for $13,000 was given in substitution of the Hanford Mortgage? A. That is my remembrance.

Q. In what shape were your matters in the Bank at that time? A. I had two mortgages there belonging to me.

Q. At that time, you mean? A. Yes, sir.

Q. Belonging to you at that time? A. Yes, sir.

Q. And you had not done anything with those mortgages before that? A. Why, I let Hogencamp have them to use in connection with the stock transaction.

Q. You had actually assigned them to Hogencamp? A. Yes, sir.

Q. And Hogencamp had actually used the notes, hadn't he? A. I don't know about that.

Q. Then what matters were to be fixed up? Some matters were to be fixed up—what matters were there to be fixed up and put in different shape? A. I suppose Mr. Hogencamp's idea was in regard to the stock which I held for him, and in regard to the mortgages, which were mine.

Q. No, you testified here—— A. (Interrupting.) I didn't know of any other matters to fix up at that time.

Q. You have testified here that your matters in the Bank were in a very unsettled shape, and he wanted Shaw to fix it in some different way—now, what matters? Your matters in the Bank, was he there referring to?

MR. CAREY: I object to that. Counsel does not quote the testimony correctly.

MR. LANE: Well, if I haven't I will withdraw the question.

THE VICE CHANCELLOR: Withdraw it, and reframe it.

Q. You testified: "My matters" (that is, your matters) "in the bank were in a very unsettled shape, and as there were judgments against me in New York"—*you*—"and more to be had probably, that I had better get them in some different shape——

THE VICE CHANCELLOR: Is this what Mr. Hogencamp said to him, or what he said Mr. Hogencamp told him?

MR. LANE: (Reading.) "Mr. Hogencamp told me that the matter of Shaw's

had not been adjusted, and he wanted it fixed up in some shape"—the thousand dollars—"and that my matters in the Bank were in a very unsettled shape."

Q. Now, what matters did you have in the Bank at that time that was in a very unsettled shape? A. Well, I suppose he referred to my holding his stock, and his holding my mortgages.

Q. Didn't he refer to the $24,000 not that the Bank held, which you had given for the stock? A. He did not.

Q. Then, what notes or matters did he refer to? A. As I said before, I suppose he referred to this stock transaction in which my mortgage was there, belonging to me, and I was holding his stock.

Q. Was that with the Bank? A. I had nothing to do with the Bank.

Q. But you testified in the other trial that it was "your matters with the Bank" that were in an unsettled shape—not your matters with Hogencamp.

MR. CAREY: I object to it.

THE VICE CHANCELLOR: I sustain the objection. He has not testified to that, he has testified that Mr. Hogencamp said that.

Q. Well, you testified that Mr. Hogencamp said that your matters in the Bank were in a very unsettled shape—were they in an unsettled shape, or not? Did you tell Mr. Hogencamp that they were not when he told you that? A. I don't remember saying anything about it. I went and saw Shaw, as he asked me.

Q. Hogencamp did tell you your matters in the Bank were in an unsettled shape, didn't he? A. As I understood, only regarding the mortgages and the stock transaction.

Q. Were your matters with the bank? A. With Hogencamp.

Q. Why didn't you tell Hogencamp they were not matters with the Bank, but with him? A. I let him attend to that part of it.

Q. Now, it was in response to the request of Hogencamp's in which he told you that your matters with the Bank were in a very unsettled shape that you went up and got Shaw to give the additional mortgage of $13,000, wasn't it? A. I brought Shaw down to see what he could do to satisfy Hogencamp, to please him.

Q. And as a result of the conference that you then had with Hogencamp and Shaw the new mortgage of $13,500 was given—that is right? A. The mortgage was not given then, it was merely the note, I understand.

Q. Wasn't the new mortgage given, too? A. Not at that time; I do not remember it being given that day. There was a mortgage given, no doubt, but I do not remember its being given that day.

Q. Well, it was about that time? A. I suppose so; I don't know.

Q. Before that time you had assigned mortgages to Hogencamp, hadn't you? A. I had given one mortgage and assigned one mortgage.

Q. I am not speaking of that (Question repeated). Before that time you had made a mortgage to Hogencamp on the Lakewood property and assigned the Hanford mortgage, hadn't you? A. Prior to that; yes, sir.

Q. In August, 1902, you received from Mr. Hogencamp a check from the Second National Bank to Mr. Shaw for $25,000, didn't you? A. Those check transactions there I most forget. He must have received it, though.

Q. Well, wasn't there deposited in the Second National Bank to Shaw's credit the sum of $25,000? A. Yes, sir.

Q. You knew it at the time, didn't you? A. I did; yes, sir.

Q. And Mr. Hogencamp gave you the amount to have Shaw sign a check for—twenty-four thousand and some dollars—and you went up to the stable and filled out a check for that and had Shaw sign it, didn't you? A. I did.

Q. Now, you knew then that the transaction was a transaction in which the Bank was involved, didn't you? A. I didn't know anything about it.

Q. You didn't even know that, did you? A. No, sir.

Q. You knew the check was drawn to the order of the Second National Bank? A. I didn't make the check; I didn't have anything to do with anyone except Hogencamp.

Q. You did not write in who the check was drawn to? A. I didn't pay any attention to it.

Q. You didn't know what the twenty-four thousand and some dollars was? A. I did not; I wasn't interested. I filled the check in with the figures that Mr. Hogencamp told me to fill in, and had Shaw sign it.

Q. You say you don't know who Gifford was? A. I do not; no, sir.

Q. Do you remember that check? A. I do.

Q. Do you know who gave you the figures to draw that check for? A. I don't remember regarding that; it is all in the one transaction; I presume Hogencamp did, although I cannot swear to it.

Q. You cannot swear he did? A. I cannot.

Q. Do you remember that you introduced Mr.

Gifford to the Bank when the Bank paid the $400 on that check? A. I haven't any recollection. I have tried to think about it.

Q. You won't say you did not? A. I won't say I did not, and I won't say I did.

Q. Did you testify, on page 114, in the case of Richards vs. Shaw: "Well, at the time Mr. Shaw went down with me to the Bank, this matter was done, as I understood, to straighten up the other matter, so as to get me clear from the paper I had there, and it was not to affect Shaw"? What paper did you refer to there? Did you testify to that, first? A. If it says so there, I did.

Q. What paper did you refer to? A. I am sure I don't know what paper it was. It was merely my condition in the Bank, and my condition in New York. I don't know what paper I referred to, whether the mortgages, stock, or what.

Q. You don't know what you were referring to? A. No, sir; that is a broad assertion, I do not know what I embodied in it.

Q. You do not know what you referred to when you said in the Richards-Shaw case that the purpose was "to straighten up the other matter, so as to get me clear from the paper I had there"? A. Well, it may have been——

Q. (Interrupting) You don't know what you were referring to? A. I don't know, no, sir, what I referred to.

Q. Did you testify, in the case of Richards vs. Shaw, page 146, as follows: "My understanding was I was indebted to Mr. Hogencamp. When I deposited that deed there and this mortgage of Hanford's I merely left it there for my own protection and for the protection of the Bank, in case I ever wanted to use it"? A. That is what I testified to.

Q. Is that true? A. Well, I left it there for safe-keeping, and if ever I did want to use it in the bank, I could use it; but I never did.

Q. You never used it in the bank? A. I did not.

Q. And you thought, when you were using it to secure the $25,000 Shaw notes in August, 1902, that you were using it to secure Hogencamp and not the Bank?

MR. CAREY: I object, because there is no evidence that this witness used the mortgages, or allowed them so to be used for the security of the Shaw indebtedness.

THE VICE CHANCELLOR: That may be; but may not counsel in cross-examination assume the existence of a state of facts, if he wants to? He has not said that this witness said so. As I understand the rule of cross-examination, you may never say to a witness "You have testified to so-and-so" if that so-and-so is not exactly what he has testified to. But I do not understand that you may not say to a witness upon cross-examination "Didn't you do so-and-so; and is not the reason that you gave a note so-and-so"—all kinds of suppositions that have not been testified to by anybody. I think that is one of the weapons in cross-examination. The objection is overruled.

A. I thought I was doing it to comply with Hogencamp's wish and accommodate him.

Q. Who were you securing? A. I don't know.

Q. You do not know who you were securing? A. I did not pay any attention to it; no, sir.

Q. Nor what you were securing? A. I didn't pay any attention to that, sir.

Q. You left it all to Hogencamp? A. Everything to Hogencamp; yes, sir.

Q. Did you testify in the case of Richards vs. Shaw, page 147 of the record, "Q. Then you say these mortgages were given to Hogencamp as collateral security for the payment of those two notes?" (Referring to your two notes of twelve thousand dollars which you had given for the stock). "A. Yes, sir." Did you testify to that? A. I did; yes, sir.

Q. Is it true? A. Well, they were given to Hogencamp to use in any way he saw fit in connection with the stock transaction; not particularly as collateral; I did not know what he wanted them for; it was only supposition on my part.

Q. Mr. Denton, what books have you in your possession which have any relation to the properties in New York and your transactions with Mr. Hogencamp? A. I have my pass book and my check book.

Q. Pass book for what year? A. Up to December, 1902.

Q. And what other books have you got? A. A check book, for which Mr. Hogencamp has the checks.

Q. From what date to what date? A. I will have to look. (The witness left the stand and returned with a check book.) From January 7, 1899 to I cannot tell the exact date because the stubs are not filled in. January 20th, 1903, is the last stub entry.

BY THE VICE CHANCELLOR:

Q. But a great many of the checks are torn out, and there are no dates on the stubs at all from No. 3,887 to 4,088. The check stubs are in here, but on only very few of them are there any nota-

tions of any sort; why is that, Mr. Denton? A. That was when Mr. Hogencamp was looking after the transactions; I did not keep any stubs. Up to April 17, 1900, I kept a very accurate account of my checks and my dealings, but after that date I simply drew the checks, as the book shows, and in only a very vew instances put anything on the stubs whatever, not even the names to whom the checks were drawn.

By Mr. Lane:

Q. Do you mean to say that Mr. Hogencamp, after April 17, 1900, kept account of the checks which you drew on your personal account? A. Not all the accounts, no, sir.

Q. He did not keep a full account, then, but he kept track of some of them on your personal account? A. Not on my personal account; no, sir.

Q. Well, that is your personal account (referring to the check stub book produced by the witness)? A. Well, this is a general check book.

Q. Have you got all of the stub entries there for the checks which went through your personal account? A. Every check stub is here, sir.

Q. For every check that went through your personal account? A. That went through every account is here; it is the only account I had with the Second National Bank.

Q. Is every return check there that went through your account in the Second National Bank which was carried in the name of Henry M. Denton? A. Yes, sir.

Q. And is there a stub entry on that check book for every check that was drawn out of your personal account to the order of H. M. Denton? A. Up to that date.

Q. Subsequent to that time, I am asking you,

whether Mr. Hogencamp drew the checks that went through your personal account?

THE VICE CHANCELLOR: No one has said he drew them. These are most of them in Mr. Denton's own handwriting.

Q. Did he keep account of them, then? A. He kept track of them.

Q. How did he keep track of them? A. Anything pertaining to the transactions he kept track of.

Q. Well, now, didn't you draw moneys out of your personal account subsequent to April, 1900, that had nothing to do with these transactions? A. I might.

Q. You carried that account down to December, 1902, didn't you? A. When my bank account was closed; yes, sir.

Q. Two years? A. Yes, sir.

Q. Do you mean to say why your stub entries do not appear in your check book is because Hogencamp, during that time, was keeping track of the checks which you were drawing upon your personal account? A. Oh, I don't say that.

Q. Then, why do not the check stubs appear there, or why do not entries on the stubs appear? A. I cannot explain any further than the book states there and, as I tried to explain to the Court, my remembrance now is that Hogencamp was interested then and was taking charge of matters, and I did not pay much attention to it.

Q. It was simply, then, because he was taking general charge of your affairs, it was not because he was keeping account of what passed through your personal account, was it? A. He did not keep track of all my checks.

Q. He did not do it? A. No, not at that time; he did later.

Q. Well, what other books have you got? A. That is all, sir.

Q. That is the only book you have got? A. The other books I gave to Mr. Hogencamp.

Q. You have no cash book? A. No, sir; that is the book I looked for; I wish I had it.

Q. No memorandum books of any kind? A. No, sir.

Q. Those are all the books you have got with respect to these transactions? A. Yes, I just kept one cash book in which I entered on one side what I received, and I entered on the opposite side what I disbursed through Mr. Hogencamp's directions; and one thing I had in it is a pencil copy of the moneys I disbursed during that period for large amounts from January, 1903, to April, 1905, which amounts to upwards of twenty-four thousand dollars, which were moneys received entirely out of rent accounts.

By the Vice Chancellor:

Q. And not turned over to Hogencamp? A. All turned over to him. That is what was turned over to him.

Q. Well, you were not disbursing things you turned over to Hogencamp? A. Well, I didn't mean that. I meant that I turned it over to him.

By Mr. Lane:

Q. This twenty-five dollars a week you have been talking about was twenty-five dollars you retained out of the rents, wasn't it?

The Vice Chancellor: He has said that all along, that he took it out of collections —out of collections of rents, he said.

MR. CAREY: Before the recess I called for checks of Mr. Denton in the possession of the other side from January 1st, 1901, down to the present time. One hundred and forty-six checks have been delivered to me. I find, on an examination of the numbers on those checks, that there is a large number of numbers which are missing in the bundle. I would like to ask counsel for the other side if they have no other checks within that period?

MR. LANE: Not that we can locate now.

MR. CAREY: I also find, on examination of the account of Mr. Denton, that checks are charged against him in his account within these dates which are not presented here among those that are delivered to me; and for that reason I am unable to make any effective use of these checks.

THE VICE CHANCELLOR: All right, sir. You may proceed.

MR. CAREY: And I have also just received a copy of a check dated November 13, 1901, drawn to the order of Edward F. Robinson, for $12,300, signed by Francis H. Robinson, and endorsed "Pay to the order of Sarah S. Horton, signed by the payee endorsed by Sarah S. Horton," and containing the stamp "Received payment through the New York Clearing House November 14, 1901. Second National Bank of Jersey City, N. J." I would like to ask Mr. Hogencamp if that indicates that the proceeds of that check went to the Second National Bank of Jersey City.

THE VICE CHANCELLOR: Put him on the witness stand. I will not let him be asked in the court room as if he were a spectator.

William Hogencamp—Recalled.

WILLIAM HOGENCAMP, recalled:

BY MR. CAREY:

Q. I now ask you if the endorsement on that check indicates that the Second National Bank received the proceeds of it (exhibiting to the witness the copy of the check just alluded to)? A. Yes, sir; I think they did, if that is correct.

Q. And where would it be found? A. I cannot tell you, sir.

BY THE VICE CHANCELLOR:

Q. What he is now asking about, Mr. Hogencamp, is this: Without any question as to whether or not that is an authentic paper, and just testifying as an expert, that is, as a bank man who has had twenty-five or thirty years' experience with banking, where would you look among the accounts of the Second National Bank to find out where that money went to when the Second National Bank got it? A. Assuming that that is a correct statement of all the figures on the back of it, I would just look for it in the account of Sarah S. Horton.

Q. Have you the account of Sarah S. Horton here? A. We have.

BY MR. CAREY:

Q. What date would you look at? A. About the date (referring to the date on the copy of the check).

Q. What is the date? A. November 13, 1901.

Q. Now, look at the Individual Ledger for that date, at the account of Sarah S. Horton, and see if you can find it there? A. (After examining the ledger and account designated.) No, sir; it is not there.

William Hogencamp—Recalled.

BY THE VICE CHANCELLOR:

Q. Well, would the Dealers' Check List show you? A. Well, if it was a demand note, a loan, there would be some credit to a loan account; if it was a credit to somebody else, it would show in somebody else's account.

Q. What book would you look into to find that out? Suppose you were looking it up for your own benefit, now, and had that piece of paper before you, where would you look—I mean by "that piece of paper" the copy of the check Mr. Carey handed to you?

MR. CAREY: Would the Dealers' Check List contain a record of that?

THE VICE CHANCELLOR: I asked him that a few minutes ago.

MR. CAREY: Well, did he answer the question?

THE VICE CHANCELLOR: I don't know whether he did, or not

THE WITNESS: No, sir; the Dealers' Check List would not show.

THE VICE CHANCELLOR: Would not the Debit and Credit book show it, that you were using here?

MR. LANE: That would show if it was received for the bank.

THE VICE CHANCELLOR: Well, let us find that out, if it is important. I don't know whether there is any importance in this thing, or not, but you are dealing with it as if it was a matter of some importance.

MR. LANE: I object to it, if your Honor plase, as immaterial and irrelevant.

THE VICE CHANCELLOR: How is it rel-

evant to spend any time about an alleged check made by Robinson and endorsed by Sarah S. Horton?

MR. CAREY: It is this: That check, of which this is a copy, was given in connection with the Beard building transaction; and the supposition is that it went either to Mr. Hogencamp or to the Second National Bank. It was the payment of a second mortgage on that building which was discharged at the time that check bears date.

THE VICE CHANCELLOR: I will overrule the objection.

BY MR. CAREY:

Q. With your Trustee account before you, as contained in Individual Ledger No. 17, A to L, page 688, and a copy of this check, can you, thus refreshed, tell us what became of the money that was received on that check? A. Yes, sir.

Q. Where did it go? A. It went to the credit of William Hogencamp, Trustee, Individual Ledger, No. 17, on page 688, on the 14th of November, 1901.

MR. CAREY: If your Honor please, I would now like to offer in evidence the exhibits which were marked during the complainants' case, J. B. V., 1 to J. B. V.,18, I think the numbers are, so far as they were not admitted. J. B. V.,1, is first offered in evidence.

MR. LANE: I object to it as immaterial and irrelevant. I think the important parts of it were dictated on the record.

THE VICE CHANCELLOR: I think so. Mr. Vredenburgh did not even offer that; he merely used it to refresh Mr. Hogencamp's

recollection about that sale, and I will exclude it from evidence because it had no evidential force itself, it was merely used to refresh Mr. Hogencamp's recollection.

(J. B. V., 2 offered in evidence by Mr. Carey.)

THE VICE CHANCELLOR: My personal notes say that that was admitted in evidence and for fear that my notes may not be correct, I will now admit J. B. V., 2 in evidence, if not heretofore admitted.

(J. B. V., 3 offered in evidence by Mr. Carey.)

THE VICE CHANCELLOR: J. B. V-3, was another one of the advertisements of Olney's. It was not offered and I shall not now admit it in evidence, because it would be a grievous thing to make anybody print it. It has no relevancy to the case. It was admitted by Mr. Hogencamp that the sale took place, that Olney was the referee, and that the property brought the price the paper showed. This is also true of J. B. V., 4. J. B. V., 5, 6, 7 and 8 are the stock certificates, and they were all admitted. J. B. V., 9 was the letter to Honeck. That is admitted. J. B. V., 10 was the transfer in the transfer book of 100 shares to Denton, dated August 12, 1901. That was admitted. J. B. V., 11 was the letter of Hogencamp to McKelvey. That was admitted. J. B. V., 12 was the check on the Chase National Bank by J. J. McKelvey to the Batavia & New York Wood Working Company, for $2,019.67, dated August 16, 1901. I am inclined to think that was admitted; if not, I will admit it.

MR. LANE: I have no objection to it.

THE VICE CHANCELLOR: J. B. V-13, was the check on the Chase National Bank to Henry M. Denton for $3,783.33, signed by

McKelvey. It was not objected to, and is admitted. J. B. V., 14 is the agreement of June 25, 1901, in which mention is made of the agreement for sale of the Beard Building at Liberty and Cedar Streets, and a mortgage held by Hogencamp for $14,000. I am not sure whether that was admitted or not. What have you to say, Mr. Lane, about its offer in case it has not already been admitted?

MR. LANE: I do not object to it.

THE VICE CHANCELLOR: All right; let it go in. J. B. V., 15 was the check of Thomas O'Callaghan, Jr., dated the 17th day of July, 1901, to W. Hogencamp, for $250, endorsed by Hogencamp; have you any objection?

MR. LANE: I object to that, on the ground that it has not been shown that Mr. Denton had anything to do with that transaction.

THE VICE CHANCELLOR: Mr. Denton?

MR. LANE: Yes; it is immaterial what O'Callaghan paid Hogencamp, outside of Denton.

THE VICE CHANCELLOR: O'Callaghan has sworn that he never paid Hogencamp any money except in connection with Denton's affairs.

MR. LANE: Well, I suppose that will carry it in for what it is worth.

THE VICE CHANCELLOR: Yes, I will let it go in for what it is worth. And that is equally true of J. B. V., 16.

MR. LANE: I have no objection to it.

THE VICE CHANCELLOR: All right, that is admitted without objection. J. B. V., 17

is the mortgage dated March 22, 1906, by Hogencamp and wife to Harding, for $10,000.

MR. LANE: Did that go in?

THE VICE CHANCELLOR: I think that is already in, is it not? And J. B. V., 18 is the mortgage from Hogencamp and wife to Harding on the Deal property—the first one, J. B. V., 17 was on the Paterson property.

MR. LANE: I have no objection to their going in, but my recollection is that they were dictated upon the minutes sufficiently for all the purposes of this case.

THE VICE CHANCELLOR: Well, I am going to assume that counsel in this case are of such calibre that they will not require the printing of a great lot of unnecessary papers, if this case goes to the reviewing court, and that they can agree on most of these things, and I have tried to dictate on these minutes practically everything that I could possibly put there, so that you would not have to print many exhibits. I shall admit these papers because I think they are evidential. If they are not already on the minutes, you may agree as to what should go in as a summary. J. B. V., 19 was a paper offered by Mr. Lane. It was signed by Mr. Hogencamp, and concerned a guaranty of the Shaw notes. My minutes say "Not yet admitted."

MR. LANE: Oh, that guaranty dated October 17, 1905, was excluded because at that time it was not shown that Mr. Hogencamp had delivered it in any a such way as to make it a binding paper in this case.

THE VICE CHANCELLOR: That is right.

MR. LANE: It is now offered.

MR. CAREY: We object to that, on the same grond that we objected to it before.

THE VICE CHANCELLOR: I am going to admit it now, because Mr. Ludlow testified that he found it among the archives of the bank, or somebody testified to that fact.

MR. LANE: Mr. Ludlow testified to that.

THE VICE CHANCELLOR: Yes, he testified that that paper was found by him among the archives of the bank; and that shows that the bank had it in its possession, and that is sufficient to overcome the objection that I entertained before, that it had not been shown to have left Hogencamp's possession in such a way as to become a document of any importance in this case. I shall admit it over your objection, Mr. Carey.

MR. CAREY: Now, your Honor, I have the right, as I understand it, to present to this Court and to the reviewing court, if necessary, certified copies of the mortgages?

THE VICE CHANCELLOR: Oh, yes; I reserved all that on the minutes—that is to say, with respect to all of those that have been brought to my attention. Of course, there is not a general open right to do it.

MR. CAREY: No, those that were testified to.

THE VICE CHANCELLOR: The ruling of the Court then made, and which it now adheres to, is that you may have marked in evidence at any time you need to have them so marked in evidence, certified copies—Mr. Lane waiving the necessity of exemplification.

You need not actually bring them to me unless I want them, but when you go to the reviewing court you may have such papers so marked, and they will be marked by me before you go there, so they will be part of the minutes of the trial. That is the understanding that was arrived at when they were first offered. Mr. Lane will not require them now, and will only require them when it becomes necessary to take the matter to the reviewing court.

MR. CAREY: Among the mortgages testified to was a mortgage for $5,000, dated some time in August, 1901; we have since discovered that there is a satisfaction of that mortgage upon the record in New York County, and I would like to have the privilege of putting in that satisfaction piece.

THE VICE CHANCELLOR: A certified copy of the satisfaction piece?

MR. CAREY: Yes, sir

THE VICE CHANCELLOR: Any objection, Mr. Lane?

MR. LANE: I do object to it unless it is done now. It is going to lead me right to the point that I opened to your Honor at noon time, that if I know when these satisfaction of mortgages were made, I might be able to trace the money.

THE VICE CHANCELLOR: Can you now tell us, Mr. Carey, the date of that satisfaction?

MR. O'CALLAGHAN: Some time in 1902, the exact date I cannot say.

THE VICE CHANCELLOR: Well, that don't help us, you see. I must confess, Mr. Carey, that I do not think I can hold the case open

for that. Of course, if the case should happen to remain open for any purpose, I will permit you to do that thing; but if the case is otherwise closeable, I shall not let it remain open for that purpose.

MR. CAREY: We had here also from the Registrar's Office the satisfaction of the $7,500 mortgage which was given in connection with the McKelvey transaction.

THE VICE CHANCELLOR: What property was that on?

MR. CAREY: On the 146th Street property. Mr. Lane has made inquiry in regard to the date of that satisfaction, and if he desires it, I would be glad to furnish him with a certified copy of that satisfaction. We have not the copy yet, but we have it in the process of making now. It did not happen to be signed by Hogencamp, the mortgage having been assigned by him before satisfaction.

THE VICE CHANCELLOR: Is that the one assigned to Levy?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: Well, we know all about that. Mr. Lane, have you any objection to the putting in evidence of a certified copy of the satisfaction of that mortgage?

MR. LANE: No.

THE VICE CHANCELLOR: Well, I will reserve the right to have you do that, just as I have said about the other.

MR. CAREY: One other matter I think of in regard to documentary evidence is the advisability of putting in a transcript of these

different accounts, the Rent Account, the Trustee Account and the Attorney Account; and if the Court desires it, we might have that made for the record.

THE VICE CHANCELLOR: Well, you now offer to have examined copies from these enormous ledgers made, of these particular accounts, and those examined copies put in evidence for the use of the Court—is that your offer?

MR. CAREY: Yes, sir.

THE VICE CHANCELLOR: What do you say, Mr. Lane?

MR. LANE: I have no objection to that, if it is important.

THE VICE CHANCELLOR: Yes; I do not see myself that I shall need them, but I think that I will rule favorably on your offer, because it may very well be that the reviewing court, which has not had the books before it the way I have had them, might want them; and if it does, you can have them available for it. I will admit them—in other words, I will admit examined copies (I imagine that is what they would legally be) of these tomes to be made, and, so far as they relate to those accounts, put in evidence. Now, there, again, of course, if, when counsel are preparing this case on appeal, they find it is not necessary to print all that, they need not print it; but it will be in the case so that you can use it in case the reviewing court will need to use it.

THE DEFENDANTS REST.

MR. LANE: I am going to apply for an adjournment, on this ground: Mr. Hogencamp is the only witness that I will have in rebuttal. He states to me that he is not in condition to go on the stand. I know as a fact that he was here until very late last night endeavoring to trace these payments; and your Honor knows that he has been in attendance on this trial for seven or eight days.

THE VICE CHANCELLOR: Nine days. This is the ninth day of the trial.

MR. LANE: He is a man of over seventy, and he tells me that he is not in physical condition to go on the stand and recollect anything; that his mind is in such condition that he cannot testify with any accuracy. Now, further——.

THE VICE CHANCELLOR: What is the necessity of Mr. Hogencamp's going back? What is it that you did not go over with him in your primary examination?

MR. LANE: There are two or three things that want to be cleared up. I think——.

THE VICE CHANCELLOR: Well, go on with your next reason.

MR. LANE: Your Honor will recollect that testimony was introduced recently in the trial with respect to certain mortgages which had been given to Mr. Hogencamp—two of $7,500 and one of $5,000, and one of $24,000— and no testimony was given with respect to when they had been satisfied until the testimony was given here on the stand, and even then some of the mortgages are yet open, so far as the testimony is concerned. It has been impossible for us to trace the

payments of those mortgages, unless we know when they were satisfied. It has been impossible for us to get those records from the County Clerk's Office in New York and still continue this trial. Now, if we have the date of these mortgages, and the satisfactions, and the properties upon which the mortgages were, we can, we think, as we did to-day with the check of $12,300, trace each one of those payments into either Hogencamp Rent, Hogencamp, Trustee, or Hogencamp, Attorney, Account, and not into Hogencamp's personal account. They cannot be traced into his personal account, because we have gone over his account and there is not one of those amounts in it; but we cannot trace them into the other accounts until we know about the dates they were paid, and upon what properties they were; and my application is for permission for time to get that information, and, on that information, examine the books of the bank and find out when those payments were made and to whom made.

THE VICE CHANCELLOR: How long a time will it take Mr. Hogencamp to recuperate from having been up late last night?

MR. LANE: It will not take him longer than to-morrow morning to recuperate.

THE VICE CHANCELLOR: Then I will adjourn until to-morrow afternoon at two o'clock, so that you can find these matters at the Registrar's office, and will go on at that hour to-morrow. That will be the order.

Adjourned until Friday, September 30, 1910, at 2 o'clock, P. M.

William Hogencamp—Direct.

Jersey City, N. J., September 30, 1910.

Hearing of the cause resumed at 2 o'clock, P. M.

COMPLAINANT'S REBUTTAL.

WILLIAM HOGENCAMP, recalled.

DIRECT EXAMINATION BY MR. LANE:

Q. It has been testified that you had, on properties belonging to Denton, one mortgage for $7,500, another mortgage for $7,500, and one for $5,000, and another for $24,000. Do you remember ever having received payment upon any of those mortgages, and if you did receive payment, how did you receive it? A. If I received any money at all, it was in settlement when the properties were sold, and the moneys credited in the account.

BY THE VICE CHANCELLOR:

Q. What account? A. The account of Hogencamp, Attorney, or Hogencamp, Trustee.

BY MR. LANE:

Q. Tell us the circumstances with respect to the sale of the 149th Street property, sold to Marx in 1905, with respect to Denton. Did he take any part in the negotiations? A. He certainly did.

Q. What part did he take in the negotiations? A. He was consulted as regards the sale and the amount which it sold for.

Q. Do you remember the drawing of the check for thirty some odd thousand dollars to Mrs. Horton? A. I do.

Q. How did that come to be drawn? A. In payment of Mrs. Horton's interest in a mortgage that was on the property.

THE VICE CHANCELLOR: He has testified to that before.

Q. At the time that check was drawn, was there any conversation with respect to the proceeds of the sale? A. Yes, sir.

Q. Where? A. In the Second National Bank.

CROSS EXAMINATION BY MR. CAREY:

Q. When did this conversation take place at the Second National Bank? A. At the time that thirty odd thousand dollar check was given.

Q. And when was that? A. I don't know. You have the check there.

Q. What did you say? A. I don't know. The check is in evidence.

Q. That was quite a long time after the sale, was it not? A. No.

Q. Well, how long would you say, after the sale? A. Well, let me see the check and I can tell.

THE VICE CHANCELLOR: The check was paid on the 27th of April, 1905. It is Exhibit C-35.

MR. LANE: It was testified to also as to the day the deposit was made of the proceeds in the Trustee Account. That would show definitely when the moneys were received.

MR. CAREY: That is another check entirely.

THE VICE CHANCELLOR: Exhibit C-35 is a check of William Hogencamp on the Second National Bank of Jersey City, dated

April 26th, 1905, for $32,821.33, to the order of Sarah S. Horton, and it was taken out of the Rent Account, he testified. Now, that much is from my minutes, and you may now cross examine him with that in view.

Q. You say that the proceeds of the sale were discussed between you and Mr. Denton at the time that thirty-two thousand dollar check was given? A. Yes, sir.

Q. And you were where at that time? A. The Second National Bank.

Q. Mr. Hogencamp, you closed the contract for the sale of this property to Mr. Mark, did you not? A. I think I did; yes, sir.

Q. And Mr. Denton was not present at the time? A. I think he was. That is my recollection of it.

Q. Where was the contract closed? A. I think it was over in New York; I am not positive about that.

Q. Where in New York? A. Oh, I say I am not positive now, I don't know where.

Q. Who else was present? A. At the closing of the contract? At the signing of the contract?

Q. Yes. A. I think Mr. Denton was present.

Q. Was that all? A. There were some attorneys there, and some agents, I presume.

Q. Well, do not tell us what you presume, tell us what you know. A. Well that is my recollection of it.

Q. And was Mr. Denton present at the closing of the title? A. That is my recollection that he was.

Q. Where did the title closing take place? A. My recollection is that it was over in Bower & Sands' office.

Q. And you say Mr. Denton was there? A. That is my recollection of it; yes, sir.

Q. Now, didn't Mr. Denton tell you, after the contract had been signed in this case, that he was sorry that you had closed the contract because he had a large offer pending? A. No, sir.

Q. Do you find any record in your Trustee Account of the moneys derived from these four mortgages which Mr. Lane just asked you about? A. Only as part and parcel of other transactions, as I recollect. It is so long ago I cannot recollect the details of that.

Q. Now, one of these $7,500 mortgages is the mortgage which was given in connection with the McKelvey transaction, is it not? A. There was a mortgage of $7,500, I do not recollect what mortgage it was.

Q. And you do not pretend that that money went into either of these accounts, do you? A. Yes; it went into some account, I don't know where. Whatever money I received went into the accounts, that is dead sure.

Q. Haven't you already testified that you received that money on your own account? A. On my own account?

Q. Yes, sir; on the mortgage which was given in the McKelvey transaction? A. No, sir; I do not think I have.

Q. What? A. I do not think I have.

MR. LANE: I want to ask another question that is not properly re-direct.

THE VICE CHANCELLOR: Very well; you may do so.

BY MR. LANE:

Q. In April, 1900, Mr. Hogencamp, what was

the value of the stock of the Second National Bank?

MR. CAREY: I object to that, on the ground that it is not properly rebuttal.

THE VICE CHANCELLOR: He has said it was not rebuttal. As to that, you need not go into any argument, because he said it was not rebuttal, but he has craved the indulgence of the Court to ask the question; and I shall grant him the indulgence, because I think this is a case that has so much in it that I shall not hold counsel to the strict rules as to the introduction of proof. But I will hear you on any other ground, that is, as to whether it is incompetent or irrelevant, &c.

MR. CAREY: I do not think I care to object on any other ground.

A. About $235 or $240.

Q. And was there any stock sold about that time? A. Yes, sir; I think there was.

Q. To whom? A. Mr. Wilson bought some stock.

Q. At what price? A. $237, as he told me.

MR. CAREY: I ask to have that stricken out as hearsay evidence.

THE VICE CHANCELLOR: But is not that the only way that we can know anything about the market price of stocks and things of that sort? I do not suppose that a witness could be debarred from testifying to the values that things had in the amrket merely because he was not personally present and saw the money pass.

MR. CAREY: I agree with that; but he is

not testifying now to the general value that this stock was quoted at, or what the general market price of the stock was; but he is testifying that in a particular instance, which he has testified, there was a sale at $237, as he was told.

THE VICE CHANCELLOR: I am inclined to think that objection is well taken. What have you to say, Mr. Lane?

MR. LANE: I do not want to be heard.

THE VICE CHANCELLOR: All right; I will strike out the answer.

BY MR. CAREY:

Q. Do you know what the book value of the stock was at that time, Mr. Hogencamp? A. I do not recollect that; no, sir.

MR. LANE: If your Honor will permit me, I want to recall Mr. O'Callaghan for one moment.

THE VICE CHANCELLOR: You may do so.

THOMAS O'CALLAGHAN, JR., recalled.

BY MR. LANE:

Q. Mr. O'Callaghan, in the case of *Richards vs Shaw,* on application for a re-hearing, you made an affidavit on the 8th day of December, 1909, did you not? A. I made an affidavit, I do not remember the title of the case.

THE VICE CHANCELLOR: Show him the affidavit.

(The original affidavit was shown to the witness.)

THE WITNESS: (After inspecting the affidavit) That is my signature, and I swore to it, sir.

Q. You stated there in that affidavit, did you not "I notice two items that were paid to me personally. The one September 5, one hundred and fifty dollars, was for services rendered Hogencamp; and the one of September 27th for $53.88 was for recording fees connected with mortgages or other instruments that were recorded by me in favor of William Hogencamp; that both items were debts of said William Hogencamp, and not of said Denton"—did you mean that? A. I certainly did, as far as I could find out.

Q. And did you consider that where mortgages are given to secure a person, the debt incurred by reason of recording is a debt of the mortgage and not of the mortgagor? A. I do not consider, where mortgages are given to secure people, that then the party who is secured should pay; but where mortgages were made, as in this instance, and not as security, as far as I knew, to Hogencamp or anybody else, I rendered the bill to Hogencamp and got his check for it.

Q. Well, you say they were given not as security? A. Not as far as I knew, except the one mortgage.

Q. What were they given for? A. All I know is that I was directed to draw all the mortgages by Denton, except one mortgage on 146th Street, which I drew at the dictation of Mr. Hogencamp when he gave us the fifty shares of stock.

Q. Well, the recording fees for the one mortgage that was given as security are in this $53.88, are they not? A. That I don't know. If you will let me see that, I can tell you, possibly. It might be. I don't know whether it is or not. My impression is that there was $10 given to me by Denton which was deducted from that bill, and that covered that item, if I mistake not.

Q. And you say that the mortgage which was given by Mr. Denton to Mr. Hogencamp for $7,500 was to secure Mr. Hogencamp for the loan of his stock? A. It was to secure the return of that stock.

Q. Then it was to secure Mr. Hogencamp for the loan of the stock? A. Well, whatever way you want to put it.

Q. And the mortgage was to be delivered up when the stock was delivered up, is that right? A. There was no talk of that, sir.

Q. Well, what is the understanding? A. There was no understanding except just the conversation. I will give you the conversation and you can draw your own conclusions, if you wish.

Q. Did you, when you went to Mr. Hogencamp and borrowed that stock, go to Mr. Hogencamp and ask him to help Mr. Denton out? A. I did not go and borrow any stock at all.

Q. When you went with Mr. Denton to Mr.

Hogencamp, did you go there and ask him to help Mr. Denton out? A. I went there and told him we had to get the money for Denton.

Q. For the McKelvey transaction? A. For the McKelvey transaction.

Q. And Mr. Hogencamp then said to you that he would give you this stock; is that right? A. He said he could not give us any money.

Q. But he would give you stock? A. But he would give us stock, which I could borrow on and use that.

Q. And then, he was to be secured by this mortgage of $7,500? A. And he was to be secured for that stock by a mortgage of $7,500 on the 146th Street and Seventh Avenue property.

Q. That was on or about the 6th day of August, 1901, was it not? A. No, sir; it was not; judging from my books it was about the 12th day of August.

Q. About the 12th of August, 1901? A. Yes, sir.

Q. Then did you have a conversation with him on the 6th of August, 1901? A. With whom?

Q. Hogencamp and Denton, or Hogencamp. A. If you let me look in my books, I can tell you. (The witness left the stand and returned with the book which he has heretofore identified as his daily office register.) Yes, sir; at the Second National Bank, Jersey City.

Q. About this stock transction? A. No, sir.

Q. You did have a conversation with him on the 12th, you say, about this stock transaction? A. I don't know (referring to the book); yes, the 12th.

Q. Then, when you made the affidavit that the agreement between Mr. Hogencamp and Mr. Denton, in your presence, was made on the 6th of August, you were mistaken? A. Let me see the affidavit. I cannot remember it.

THE VICE CHANCELLOR: Let him see the affidavit. That is perfectly proper.

(The affidavit is handed the witness.)

THE WITNESS: The date is wrong, it should have been the 12th.

THE VICE CHANCELLOR: The date of the affidavit?

THE WITNESS: The date in the affidavit. It should have been the 12th of August.

Q. And when you stated in your affidavit "that an agreement was entered into between Mr. Hogencamp and Mr. Denton, in this deponent's presence, which was in substance that said Hogencamp was to assume a portion of a claim against Denton in favor of the New York & Batavia Wood Working Company that was then in the hands of J. J. McKelvey, an attorney of the City of New York, for collection, in consideration of receiving a mortgage for $7,500 on property on the northwesterly corner of 146th Street and Seventh Avenue in the City of New York" you were also mistaken, were you? A. I was mistaken as to the date, but as to the other matter, no.

Q. The other matter is true? A. It is absolutely true.

Q. And you think the other matter is in accordance with what you have testified to on this trial? A. I distinctly understood it so, that he was to get a mortgage for $7,500 to secure the $6,000 note, for which he was to get the balance over what was due McKelvey, amounting to a little over $2,000.

Q. But that is not what you said in this affidavit. You said in this paper that the agreement between Hogencamp and Denton was in substance "that said Hogencamp was to assume a certain

portion of a claim." A. He certainly did, when he paid $2,200 of it.

Q. And you think that is an assumption of a claim? A. I certainly do, the best assumption that can be made—to pay the claim, or a portion of it.

Q. And that is what you referred to when, a little further down in your affidavit, you said "that the amount of the said claim which Hogencamp agreed to assume was, when paid, etc"? A. (Inspecting the affidavit.) The $7,200 was a mistake. I had not my books before me at the time, and it should have been just as I explained it to you.

Q. Well, should have been what, now—how much? A. It should have been $2,219.67.

Q. And that was the amount that you referred to when you said Hogencamp "assumed it"? A. Well, he assumed it by putting up the collateral, and getting the difference between that amount and the $6,000.

Q. Well, this affidavit was made for the purpose of showing that the moneys which were paid out by Mr. Hogencamp were paid out for his own benefit and not for the benefit of Denton, was it not? A. No, I do not know what the purpose of it was.

Q. You did not know what the purpose of this affidavit was at the time you made it? A. No, sir; I did not. All I knew was that he asked me if I knew anything about the Denton-Hogencamp matters, and I said yes, that I knew Hogencamp got over one hundred thousand dollars of Denton's money, and I didn't know where it went to.

COMPLAINANTS REST.

BOTH SIDES CLOSE.

Exhibits.

Exhibits C. 1. (Page 93 of the record) is a mortgage made by Henry M. Denton and wife to William Hogencamp, dated September 1st, 1900, recorded August 22nd, 1901, in liber 75 of mortgages, page 15, Ocean County, N. J., covering the property described in the Bill of Complaint, to secure the payment of the sum of $12,000 and is described fully in the bill of complaint.

Exhibit C. 2. (Page 94 of the record) is a bond accompanying the mortgage made by Henry M. Denton to William Hogencamp and described in the bill of complaint.

Exhibit C. 3. (Page 95) is an assignment made by William Hogencamp to Dewight S. Harding of the bond and mortgage mentioned and referred to in the bill of complaint, to wit, Exhibits 1 and 2, and the assignment is dated March 22nd, 1906, and duly recorded and recites a consideration of $12,000.

Exhibit C. 4. (Page 95) is an assignment made by Dwight S. Harding to Robert S. Hudspeth, Trustee, the complainant, assigning the bond and mortgage in question duly recorded, reciting a consideration of $12,000, dated April 10th, 1906.

Exhibit C. 5. Is a check on 2nd National Bank, dated March 14th, 1903, and signed Henry M. Denton, drawn to the order of Interest Account for $807.82 with the word "Atty" written in lead pencil upon the face of the check and upon the back of the check in ink, the following: "Shaw $629.26; Hanford $72; Denton balance $106.56; total $807.82"; described on pages 96, 97, 98, 99 and 100 of the record.

Exhibits.

Exhibit C-6. Exhibit C-6 is a note of $12,000 dated Jersey City, April 23, 1900, payable in three months at the Second National Bank of Jersey City, with interest; signed Henry M. Denton, to the order of himself, upon the face of which is written the words "Cancelled" and upon the back of which appears "$2.40 of cancelled internal revenue stamps, cancelled in the following form 4-23-1900, H. M. D." and the following written upon the back of said note "Interest paid to December 31st, 1900" and endorsed Henry M. Denton.

Exhibit C. 7 is a note in exactly the same form with exactly the same endorsement and both notes are described page 125 to 127 of the record.

Exhibit C. 8 is a note dated July 23rd, 1900, for $24,000 signed R. L. Shaw, payable on demand to the order of himself at the Second National Bank of Jersey City, with interest. Across the face of the note are the words "renewed"; upon the back of the note there are $4.80 of cancelled internal revenue stamps cancelled in the following form "7-23-1900, R. L. Shaw", and endorsement "R. L. Shaw" and in lead pencil the words "Interest charged to June 30, 1901" and in ink "Interest paid to December 31, 1900"; described on pages 128 to 130 of the testimony.

Exhibit C. 9. Check dated July 23rd, 1900, on the Second National Bank, payable to the order of Litell Loan Account $1,056.25; signed W. Hogencamp, bearing upon its face two cancelled internal revenue stamps cancelled in the following form "W. H. 7-23-1900; described page 144 to 147 of the record.

Exhibits.

Exhibit C. 10 is a letter in Hogencamp's handwriting, except the signature R. L. Shaw; described on page 148 of the record as follows:

"Jersey City, N. J., August 20, 1901.
W. Hogencamp, Esq., Prest.,
Second National Bank,
Jersey City, N. J.

Dear Sir:

Please deliver to Henry M. Denton the one hundred shares of Second National Bank stock heretofore left with you as collateral security for my note for $24,000.

Yours truly,
R. L. SHAW."

Exhibit C. 11 A to T are checks fully described in the record, page 151, 159, 160, 161, 162.

Exhibit C. 12 is a note attached to Exhibit C. 11 J. which note is fully described on page 161 of the record.

Exhibit C. 13 is a check dated May 1st, 1902, drawn to the order of the Commercial Trust Company on the 2nd National Bank for $6,067, signed Henry M. Denton, endorsed "pay to the order of the Third National Bank, Jersey City, Commercial Trust Company of New Jersey, Oscar L. Gubbelmen, Treasurer, and is fully described on page 161 of the record.

Exhibit C-14 is a check dated May 1st, 1902, to the order of John J. McKelvey for $7,255, signed Henry M. Denton, endorsed John J. McKelvey, pay Sea Board National Bank or order, McKelvey & Mattucks; received payment through New York Clearing House, May 3rd, 1902, Second Teller Sea Board National Bank and described fully on pages 162, 163 of the record.

Exhibits.

Exhibit C. 15 is a note dated July 19th, 1901, for $13,000 signed Henry M. Denton, payable on demand to the order of himself, at the Second National Bank of Jersey City, with interest, endorsed as follows: "Interest paid to August 6th, 1901, credit September 7th, 1905, $7,652.80; also endorsed Henry M. Denton and described on page 167, 168, 169 of the record.

Exhibit C-16 is a check dated July 19th, 1901, payable to the order of Henry M. Denton, $13,000, signed William Hogencamp, endorsed Henry M. Denton and described in the record page 167 to 169.

Exhibit C. 17 is a mortgage made by Frank Hanford and wife to Henry M. Denton, dated January 16th, 1895, for $12,000, recorded on the 17th day of January, 1895, and bond accompanying said mortgage, covering the undivided one-half part of what is known as the Shaw property situate in Jersey City, which had been conveyed to Henry M. Denton and Robert L. Shaw by Lydia A. Clark, by deed dated May 1st, 1882, recorded in the Register's Office of the County of Hudson in Liber 378, page 304 and also which had been conveyed to Henry M. Denton and Robert L. Shaw by deed dated March 1st, 1886, and recorded in the Hudson County Register's Office 414 of deeds, page 558, the statement in the mortgage being that it was given to secure a part of the consideration or purchase money for part of the premises. The mortgage is endorsed "The within mortgage having been fully paid and satisfied the Register of Deeds of Hudson County is hereby authorized to cancel the same of record, May 11th, 1904. William Hogencamp, assignee of Henry M. Denton, mortgagee, by D. W. McCrea, attorney" and the

mortgage is cancelled of record May 24th, 1904. It is described on pages 172 and 173 of the record.

Exhibit C-18 is an assignment dated September 1st, 1900, made by Henry M. Denton to William Hogencamp of the bond and mortgage heretofore described, reciting a consideration of $12,000, reciting that there is due upon the mortgage $12,000 with interest from January 16th, 1900, which is signed and acknowledged by Henry M. Denton and bears upon its face cancelled revenue stamps of $5.50, cancelled as follows: "H. M. D., September 1st, 1900" and is recorded in the Office of the Register of Hudson County on the 21st day of August, 1901, in Book 75 of Assignments of Mortgages, page 520, and is described on page 173 of the record.

Exhibit C-19 is a note dated August 27th, 1902 for $13,000 payable on demand signed by R. L. Shaw to the order of himself, payable Second National Bank of Jersey City with interest, endorsed as follows: "R. L. Shaw". Above the signature of R. L. Shaw and written in the handwriting of William Hogencamp are the words "Pay to William Hogencamp or order". Below the signature of R. L. Shaw and in the writing of William Hogencamp are the words "Without recourse, William Hogencamp". The note is described on pages 176 and 177 of the record.

The note for $12,000, dated June 30th, 1902, signed R. L. Shaw to the order of himself payable on demand at the Second National Bank of Jersey City with interest and endorsed R. L. Shaw was read into the record on pages 178 and 179 from the record of the case of Richards vs. Shaw and is referred to as G. W. B. 2.

Exhibit C-20 is a mortgage made by Robert L. Shaw to William Hogencamp dated August 27th, 1902, covering the whole of the property of which the mortgage made by Frank Hanford to Henry M. Denton, Exhibit C-17, covered one-half and is for $13,000, and recites a consideration of $13,000, and recites the following: "And provided always and it is agreed by and between the parties to these presents that if the said Robert L. Shaw, his heirs, executors or administrators do and shall well and truly pay or cause to be paid to the party of the second part the sum of $13,000 lawful money of the United States, with interest payable on demand. This mortgage is given to secure the payment of a certain promissory note of even date herewith, for the sum of $13,000, made by the said Robert L. Shaw, party of the first part to William Hogencamp, party of the second part, payable on demand, at the Second National Bank of Jersey City, without any deduction or defalcation, etc., then the obligation shall cease and be void." The mortgage is described on pages 183, 184, 185 and 186 of the record and is recorded upon the 26th day of April, 1904, in book 517 of mortgages, page 406.

Exhibit C-21 is a check to the order of Henry M. Denton, drawn by the Commercial Trust Company of New Jersey on the Third National Bank of Jersey City, dated August 23rd, 1901, endorsed by Henry M. Denton and described on pages 193 and 194 of the record.

J. B. V. 1 is an advertisement of sale by Peter B. Olney, referee, dated March 13th, 1900, in the suit in which William Hogencamp is plaintiff against Stephen D. Pierce and others, and showing the sale of the property upon April 10th,

1900, under foreclosure and the signing of the conditions of sale as follows: "William H. Redfield, by Henry M. Denton, Attorney", and is fully described on pages 276, 277, 278 and 283 of the record. Not offered in evidence. (See page 899).

J. B. V. 2, is a memorandum used by the witness Hogencamp and is fully described on pages 280 and 283 of the record. In evidence on page 900.

J. B. V. 3, is a second advertisement of sale respecting the same suit as J. B. V. 1, and is fully described on pages 283 of the record. Not in evidence. (See page 900.)

J. B. V. 4, is an advertisement of a portion of the same property in the same suit and is fully described on page 284 of the record. Not in evidence. (See page 900.)

Exhibits J. B. V. 5, 6, 7 and 8, are stock certificates and are fully described on pages 285 and 290 of the record. Formally admitted page 900.

Exhibit J. B. V. 9, is a letter written by James G. Haskings, Cashier to C. H. Herrick and is printed in the record, page 294. Formally admitted page 900.

Exhibit J. B. V. 10 is a transfer of stock and is printed in the record at page 297. Formally admitted at page 900.

Exhibit J. B. V. 11 is a letter written by William Hogencamp to J. J. McKelvey, November

16th, 1901, and is printed in the record on page 298. Formally admitted at page 900.

Exhibit J. B. V. 12 is a check payable to the order of Batavia & New York Wood Working Company for $2,019.67 signed "J. J. McKelvey" and is printed in full on page 303. Formally admitted at page 900.

Exhibit J. B. V. 13, is a check dated August 15th, 1901, payable to Henry M. Denton for $3,783.33, signed J. J. McKelvey. Formally admitted at page 900.

Exhibit J. B. V. 14 is an agreement with respect to the Beard Building and is fully described in the record, pages 306 and 309. Formally admitted at page 901.

Exhibit J. B. V. 15, for identification, is a check of Thomas O'Callaghan, Jr., fully described in the record, page 311. Formally admitted at page 901.

Exhibit J. B. V. 16, for identification, is a check of Thomas O'Callaghan, Jr., fully described in the record on page 313. Formally admitted at page 901.

Exhibit C-11, U, is a check dated August 22nd, 1901, pay to the order of F. N. Rose, judgment $3,448.29, drawn on the Second National Bank of Jersey City, signed "W. Hogencamp", and described in the record on page 324.

Exhibit J. B. V. 17, is a mortgage dated March 22nd, 1906, by William Hogencamp and wife, to Dwight S. Harding, to secure the sum of $10,000, at 6 per cent. on premises in the City

of Paterson, New Jersey, and described on page 344 of the record. Formally admitted at page 902.

Exhibit J. B. V. 18, is a mortgage made by Hogencamp and wife to Harding, on property at Deal, to secure the sum of $35,000, dated March 22nd, 1906. Formally admitted at page 902.

Exhibit M. L. 1, is a guarantee of the payment of the note in suit and the $13,000 note, dated October 17th, 1905, signed by William Hogencamp and is described on pages 357, 372 of the record; foregoing admitted in evidence under the name of J. B. V. 19, pages 902, 903. It is as follows: On the letter head of the Second National Bank of Jersey City, Jersey City, N. J., October 17th, 1905. For value received I hereby guarantee the payment on or before January 1st, 1906, of two certain notes made by Robert L. Shaw, one for $12,000, dated June 30th, 1902, and the other for $13,000, dated August 27th, 1902, W. Hogencamp.

Exhibit C-22, is a check dated January 4th, 1905, payable to the order of Interest account, $1,983.79, signed Henry M. Denton; endorsed on the face of the check in lead pencil, W. Hogencamp, Rent Account; endorsed on the back in lead pencil, Shaw, $750; Denton, $452.92; Redfield, $708.87; Hanford, $72; Total, $1,983.79; described on pages 320, 421, of the record.

Exhibits C-23, C-24 and C-25 are dividend checks fully described at page 425 of the record.

Exhibit C-26, deposit slip of the Second National Bank, showing the deposit of the dividend checks in the name of W. Hogencamp Rent Ac-

count, each deposit slip being for $400 and having marked on it "dividend"; fully described on pages 422, 426, 427 and 428 of the record.

Exhibits C-27, C-28, C-29, C-30, C-31, C-32 and C-33 are checks drawn on the Second National Bank to the Hudson Trust Company, signed Henry M. Denton, each endorsed on the face "Rent Account" and described on pages 429 to 431 of the record.

Exhibit C-34 is a check dated April 20th, 1905, drawn on the Second National Bank to sundry credits for $51,486.50, signed W. Hogencamp; endorsed on the face in lead pencil "Rent Account" and in ink on the back as follows "Credit suspended debt; Redfield, $23,628.96; do, B. & M., $12,500; Mis. Bills, B. & M., $12,230; Redfield Interest, $3,127.54; total, $51,486.50; described on pages 432, etc., of the record.

Exhibit C-35 is a check dated April 26th, 1905, and fully described on page 435 of the record.

Exhibit C-36 is a check dated January 30th, 1902, drawn on the Second National Bank to Robert L. Shaw, $900; signed W. Hogencamp, trustee, and is fully described on page 439 of the record.

Exhibit C-37, is a check dated January 30th, 1902, on the Second National Bank, signed Henry M. Denton, drawn to the order of R. L. Shaw, $900; endorsed on the face in ink "Trustee Account"; described in full on page 441 of the record.

Exhibit C-38 is a check of R. L. Shaw, dated August 27th, 1902, to the order of the Second

National Bank for $24,114.41, described in full on page 442 of the record.

Exhibit C-39 is a check of R. L. Shaw, dated September 10th, 1902, on the Second National Bank to the order of the Second National Bank for $400; described in full on page 442 of the record.

Exhibit C-40 is a check of R. L. Shaw, dated August 27th, 1902, on the Second National Bank of Jersey City, to Charles S. Gifford, described on page 443 of the record.

Exhibit C-41 is a check dated December 20th, 1900, drawn on the Second National Bank, payable to the order of Henry M. Denton, $24,000, signed "W. Hogencamp"; endorsed "Henry M. Denton" and described on pages 522 and 523 of the record.

Exhibit C-42 is a check to the order of William Hogencamp, dated March 21st, 1901, signed Henry M. Denton, for $10,000; endorsed W. Hogencamp and described on page 534 of the record.

Exhibit C-43 is a check dated March 21st, 1901, drawn on the Second National Bank by Henry M. Denton to W. Hogencamp, for $344; endorsed on the back "W. Hogencamp"; described on page 534 of the record.

Exhibit C-44 is stated on page 550 to be a note dated Jersey City, June 5th, 1905, payable on demand to the order of myself for $2,513.30 to the Second National Bank of Jersey City; signed Henry M. Denton.

Exhibit C-45, is stated to be a check on the Second National Bank of Jersey City, dated November 16th, 1905, made to the order of Loan Account and taxes, $2,513.30; signed William Hogencamp, with the words in ink "Rent Account", page 550 of the record. There is a duplication of exhibit numbers as will be hereafter adverted to.

Exhibit A-10 is a check signed by Henry M. Denton that went through the William Hogencamp rent account, described at page 551 of the record.

Exhibit A-8 is a similar check described in full on the record at page 552.

Exhibit A-9 is a similar check described in full on page 552 of the record.

Exhibit A-11 is a similar check described in full on page 553 of the record.

Exhibit L. M. G. 1 is an account book from which the witness Hogencamp refreshed his recollection and is referred to on page 557 of the record for purposes of identification.

Exhibit C-44 is an assignment of a mortgage from Florence N. Rose to William Hogencamp, fully described on page 561 of the record. There are two Exhibits C-44 as hereafter set forth.

Exhibit C-45 is a check drawn to the order of the Hudson Trust Company, January 27th, 1905, for $10,000, a check of the Second National Bank signed by W. Hogencamp, president, and is marked "Cashier's Check", and is fully described at page 616 of the record. There are two Exhibits C-45.

Exhibits.

Exhibit C-46 is a deposit slip showing a credit to Cashier's Account with the Second National Bank, of $10,000, written on the face in lead pencil are the words Hudson Trust Company; described in full on page 617 of the record.

Exhibit C-47 consists of two papers; a note dated December 10th, 1901, signed Henry M. Denton to the order of Robert L. Shaw, marked across the face "Trustee's Account"; endorsed Robert L. Shaw and a check on the Second National Bank dated February 10th, 1902, payable to the order of Stroh & Huber. Note $252.50. Signed W. Hogencamp, trustee, page 624 of the record.

Exhibit C-48 is a similar note and check with different dates and for a different amount, described in full at page 625 of the record.

Exhibit C-49 consists of two papers, one check drawn on the Second National Bank, January 30th, 1902, to the order of the Emigrant's Industrial Savings Bank, $560. Signed "Henry M. Denton" and endorsed on the face "Trustee's Account", and a check dated January 30th, 1902, to the order of H. M. D., interest, $560." signed "W. Hogencamp, Trustee" on the Second National Bank, Jersey City; described in full on page 625 of the record.

Exhibit C-50 consists of three papers checks drawn on the Second National Bank, one dated March 8th, 1902, to the order of I. Ossermann, for $300; signed Henry M. Denton; another dated March 12th, 1910, to the order of I. Ossermann for $100; signed "Henry M. Denton"; both endorsed on the face "Trustee Account" and a check

dated March 10th, 1902, to H. M. Denton, painting, $400. Signed "W. Hogencamp" trustee; described at page 627 of the record.

Exhibit C-51. A to E inclusive are five checks drawn on the Second National Bank of Jersey City at different times by Henry M. Denton to his own order; endorsed by him for different amounts and each having upon the face the word "Trustee's Account"; described in full on pages 628 and 629 of the record.

Exhibit C-52. A to I inclusive are checks drawn on the Second National Bank of Jersey City by W. Hogencamp, trustee, to the order of H. M. Denton for different amounts and each endorsed by Henry M. Denton and described in full on pages 629 and 630 of the record.

Exhibit C-53 consists of two papers, both checks, drawn on the Second National Bank, one March 29th, 1902, to the order of Cash, $1,700; signed "Henry M. Denton"; endorsed on the face "Paid" and "Trustee's Account" and the other signed "W. Hogencamp, Trustee" to the order of H. M. D., for $1,700; described in full on pages 630, 631, of the record.

Exhibit C-54 is a check drawn on the Second National Bank, Jersey City, to H. M. Denton, for $146.05, signed "William Hogencamp, attorney"; endorsed in lead pencil on the face of the check "Atty."; endorsed on the back by H. M. Denton.

Exhibit C-55 is a check on the Second National Bank of Jersey City, dated September 10th, 1903, drawn to the order of R. L. Shaw, $27.76, signed

New Jersey State Library

"Henry M. Denton"; endorsed on the face in lead pencil "attorney"; endorsed by "R. L. Shaw" described in full on pages 632, 633, of the record.

Exhibits C-56. A. to Q are 17 checks on the Second National Bank of Jersey City, all signed by "Henry M. Denton" and each bearing upon their face in lead pencil the word "atty." and described in full on page 634 of the record.

Exhibits M. L. 2, 3, 4, 5, for identification, are checks fully described on page 634 of the record.

Exhibit C-57 is a check dated May 1, 1903, drawn on the Second National Bank, Jersey City, signed "Henry M. Denton" to the Hudson Trust Company for $270; endorsed on the face in lead pencil "atty. account"; described in full on pages 639 and 640 of the record.

Exhibit C-58 is a check dated June 30th, 1903, drawn on the Second National Bank of Jersey City; signed "Henry M. Denton" to the order of the Hudson Trust Company for $1,635; endorsed on the face in lead pencil "Atty. Acc."; described on pages 639 and 641 of the record.

Exhibit C-59 consists of three papers, one a note dated January 25th, 1902, for $1173.98; signed Henry M. Denton, payable on demand; endorsed "Henry M. Denton"; marked in lead pencil on the face "Trustee's account"; the other a check dated January 25th, 1902 drawn on the Second National Bank by Henry M. Denton to Henry Anderson for $1173.98; the other a check drawn on the Second National Bank dated January 25th, 1902 for $1173.98 by William Hogencamp, trustee; the check bears a perforated mark of having been paid and described in full page 641 of the record.

Exhibits.

Exhibit C-60 consists of three exhibits a note dated October 19th, 1901 for $1250. payable in three months, made by Henry M. Denton to the order of "R. L. Shaw endorsed" R. L. Shaw and by others a note dated January 20th, 1902 for $1250. payable on demand made by Denton; endorsed by Denton; endorsed on the face in ink "trustee account"; check dated January 30th, 1902 payable to the order of Note. H. M. D. $1252.-39 signed Wm. Hogencamp, Trustee and described in full page 642 of the record.

Exhibit C-61 consists of two exhibits; a note dated January 23rd, 1902 $1850; payable twenty-seven days after date; signed Henry M. Denton; endorsed by Denton; endorsed on the face "trustee's account"; in ink; and a check dated January 30th, 1902 on the Second National Bank of Jersey City, payable to the order of Note, H. M. D., $1850. signed "W. Hogencamp, Trustee" and described page 643 of the record.

Exhibit C-62 is the order of the United States District Court in Bankruptcy permitting the foreclosure suit to be brought, page 706.

Exhibit G. W. B. 1, and also called G. W. B. 2, page 735, is a mortgage dated August 15th, 1901, made by William H. Redfield of Jersey City to William Hogencamp of Deal for $7500, and described in full on page 730 and 731 of the record.

Exhibit G. W. B. 3, is a $5,000 mortgage referred to on page 735 of the record; formally admitted in evidence page 901, 902.

Exhibit G. W. B. 4, is a satisfaction of the

$7500. mortgage referred to on page 735 of the record. Read into the record p. 736 and 737.

Exhibit G. W. B. 4, is a check described in full page 747 of the record; a copy of the satisfaction was originally marked G. W. B. 4, and then read into the record and the mark withdrawn.

T. O. C. 1, is a memorandum of Thomas O'Callaghan marked for identification and described in the record p. 753.

T. O. C. Jr., 2, is marked for identification as a contract dated June 10th, 1901 from Redfield and Roberson for the exchange of the Beard Building and is described on page 757 of the record.

New Jersey Court of Errors and Appeals.

Between ROBERT S. HUDSPETH, Trustee, and the SECOND NATIONAL BANK OF JERSEY CITY, *Complainants-Appellants,* *and* HENRY M. DENTON, MILLICENT S. DENTON and ROBERT L. SHAW, *Defendants-Appellees.*	On Bill to Foreclose. On Appeal Heard below before Garrison, V. C.

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BRIEF OF APPELLANTS.

Statement of the Case.

This suit was brought by Robert S. Hudspeth as Trustee and the Second National Bank of Jersey City, his *cestui,* to foreclose a mortgage made on the 1st day of September, 1900, by Henry M. Denton and Millicent S. Denton, his wife, to William Hogencamp, to secure the sum of $12,000 evidenced by a bond bearing the same date, which mortgage was recorded on the 22nd day of August, 1901. The bond and mortgage had been assigned on the 22nd day of March, 1906, by the said William Hogencamp to Dwight S. Harding and by the said Dwight S. Harding assigned April 10th, 1906, to Robert S. Hudspeth, Trustee. Robert S. Huds-

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peth, Trustee, held the mortgage for the Second National Bank of Jersey City. Henry M. Denton had transferred after the making, execution and delivery of the mortgage, part of the lands and premises to Robert L. Shaw.

The bill was amended *ore tenus,* (page 119 of the record). The defendants were given leave to further answer (page 125). They did not do so. William Hogencamp was made a party (page 125). He was present in court and *ore tenus* answered that he had no interest excepting after the bank is satisfied.

The case, therefore, came on for hearing upon the Bill of Complaint (page 6), as amended (page 119), the Answer of Henry M. Denton and Millicent S. Denton (page 24), the Answer of Robert L. Shaw (page 39) and the Answer of William Hogencamp (page 125).

After a hearing lasting for some days the Vice Chancellor filed a memorandum (page 53), upon which there was entered an interlocutory decree directing an accounting (page 89), from which this appeal is taken by the complainant.

The Issues.

The Bill and Complainants' Proof.

The issue tendered by the complainants appears in the amendment (page 119), and as briefly as I can state it is as follows:

That prior to April, 1900, Henry M. Denton had borrowed large sums of money from the Second National Bank of Jersey City. That in April, 1900, William Hogencamp, president of the Second National Bank, sold to Henry M. Denton 100 shares of the stock of that bank at a valuation of $240 per share; Henry M. Denton gave him at that time two notes, each dated April 23rd, 1900, each for the sum of $12,000. That these notes

were not discounted but kept by William Hogencamp. That William Hogencamp had in his possession as security for any moneys which Henry M. Denton might borrow from the bank or from himself **and to do with as he saw fit,** a Bond and Mortgage made by Frank Hanford and wife to Henry M. Denton, on a one-half interest in the property owned by Robert L. Shaw in Jersey City for $12,000 and the deed of the property which Henry M. Denton owned in Lakewood upon which the mortgage now in suit was subsequently given. That William Hogencamp could not discount the $12,000 notes of Denton in the Second National Bank, and when they became due on the 23rd day of July, 1900, insisted that Denton should give in exchange for the notes an obligation which might be discounted, and thereupon Denton caused Robert L. Shaw to give a note for $24,000, dated July 23rd, 1900, which note was discounted by the Second National Bank. That as security for the payment of this note William Hogencamp, as president of the Second National Bank, held the 100 shares of stock sold by him to the said Denton. That as further security the said William Hogencamp as president held an assignment of the mortgage made by Frank Hanford to Henry M. Denton, which was made by Denton upon September 1st, 1900, the mortgage being for $12,000, and also held the mortgage in suit which was made upon the 1st of September, 1900, by Denton to Hogencamp; that on the 20th day of August, 1901, in response to a letter, which is in evidence as Exhibit C-10 (p.), and which is as follows:

"Jersey City, N. J., August 20th, 1901.

"W. Hogencamp, Esq., Prest.,

"Second National Bank, Jersey City, N. J.

"Dear Sir: Please deliver to Henry M.

Denton the 100 shares of Second National Bank stock heretofore left with you as collateral security for my note for $24,000.

"Yours truly,

"R. L. SHAW."

Hogencamp delivered up the 100 shares of stock then held by him as trustee for the Second National Bank of Jersey City to secure the note of Robert L. Shaw to Henry M. Denton so that he might borrow on the same for his own purposes and there was then specifically applied to the indebtedness represented by the $24,000 note of Robert L. Shaw discounted at the Second National Bank, the mortgage made by Frank Hanford and wife to Henry M. Denton and assigned to William Hogencamp September 1st, 1900, and also the mortgage which is in suit. The assignment of the Hanford mortgage dated September 1st, 1900, as aforesaid was recorded upon the 21st day of August, 1901, or the day after the order from Shaw to Hogencamp was given under which the stock was delivered and the mortgage in suit was recorded upon the 22nd day of August, 1901, or two days after, the difference in the date of recording being accounted for by the fact that the Second National Bank is in Jersey City and the lands covered by the mortgage in suit are in Ocean County, and it took that length of time for the mortgage to reach there.

On or about the 27th day of August, 1902, the form of the indebtedness held at the Second National Bank of Jersey City was changed into two notes, one for $13,000 dated August 27th, 1902, and the other for $12,000 dated June 20th, 1902, making a total of $25,000, $24,000 of which represented indebtedness originally represented by the $24,000 note of Robert L. Shaw, dated July 23rd, 1900, and discounted at the bank, which note really represented the indebtedness of Henry

M. Denton, evidenced by the two notes dated April 23rd, 1900, each for the sum of $12,000; and an additional $1000 which was used by Richard L. Shaw for his own purposes. Both these notes, one for $13,000 and the other for $12,000 were discounted by the Second National Bank on the 28th day of August, 1902. Either when they were discounted on the 28th day of August, 1902, or before that time the mortgage collateral was specifically applied to the specific notes, for upon the 27th day of August, 1902, Robert L. Shaw gave a mortgage to William Hogencamp, which is in evidence, Exhibit C-20 (page), to secure the payment of the sum of $13,000 which is stated in the mortgage to secure:

> "This mortgage is given to secure the payment of a certain promissory note of even date herewith for the sum of $13,000 made by the said Robert L. Shaw, party of the first part, to William Hogencamp, the party of the second part, payable on demand at the Second National Bank of Jersey City."

It will be observed that the note of $13,000 made by Robert L. Shaw to the order of himself is dated August 27th, 1902. This mortgage was upon the entire interest on the property of which a half interest was covered by the mortgage of Frank Hanford and wife to Henry M. Denton and was given in substitution of the Hanford mortgage. The Lakewood mortgage, now in suit, was for $12,000 and was left to secure the $12,000 note dated June 20, 1902.

The recital in the mortgage is palpably a mistake so far as it states that the mortgage was given to secure a note made by Robert L. Shaw to the order of William Hogencamp. The note was not to the order of William Hogencamp, but to the order of himself and discounted at the Second National Bank. Neither of these notes have been paid.

The Answers.

The answers set up that Denton was not indebted to Hogencamp; that the sale of the stock was a mere colorable transaction and for the purpose of permitting Hogencamp to borrow money. That to carry out such transaction, the bonds and mortgages were delivered to Hogencamp as aforesaid (page 26). That if there was anything ever due on the mortgage to the bank or to any person representing it as trustee, the full amount thereof has been paid.

The Decree.

The decree adjudges (page 89), that in the month of April, 1900, William Hogencamp was the owner of 100 shares of stock of the Second National Bank as stated in the Bill, and Denton was the owner of the property covered by the mortgage; that by an agreement between the parties Hogencamp in form sold to Denton the 100 shares of stock and received from Denton two promissory notes for $12,000 each, with the understanding and agreement that as collateral security for the payment of the indebtedness evidenced by the notes the said Denton would, among other things, mortgage the property covered by the mortgage in suit to the said William Hogencamp; that subsequently and in the month of July, 1900, by an agreement between Dentfon and Hogencamp a note of $24,000 was made by Shaw to the said Hogencamp to take the place of the two $12,000 notes made by Denton to Hogencamp and that subsequently and in pursuance with the original agreement Denton and wife made to Hogencamp the mortgage in question in this suit.

It is further adjudged (page 90), that the note of Shaw's was used by Hogencamp at the Second

National Bank for Hogencamp's benefit and that during the time that this original indebtedness existed and so long as it was continued by successive renewals of the original indebtedness, the bank was entitled to recover on the mortgage in suit as collateral security the whole or such parts thereof as still remained unpaid, to wit, all of the original indebtedness.

It is further adjudged (page 90), that in the month of August, 1901, at which time it must be remembered the letter from Shaw to Hogencamp was dated directing Hogencamp to deliver up the 100 shares of stock to Denton, Denton availed himself of the stock in form sold by Hogencamp to him at the Second National Bank and used the same as collateral security for moneys borrowed for his own purposes. That Hogencamp subsequently paid off the notes thus made by Denton to the banking institutions and regained possession of the collateral.

It is further adjudged that Hogencamp subsequently in the year 1905, by arrangement between himself and the Second National Bank, secured the return to him, Hogencamp, of the Shaw note, to which the mortgage in question was collateral as aforesaid, and the mortgage in question, and thereafter repledged the same to the bank for whom the complainant is trustee, and that the bank is entitled to recover whatever sum of money, if any, there may be found to be due from Denton to Hogencamp on account of the moneys received by Denton upon promissory notes made by him and discounted by banking institutions with the stock aforesaid as collateral and which note or notes, if any, were paid off by Hogencamp with his own funds for the purpose of regaining possession of the said stock and for which sums so found to be due Hogencamp, the said Hogencamp has not been repaid by the said Denton, and thereupon for the purpose of finding the amount due the matter was referred to a master to take an account.

The Appeal.

This appeal is taken from that part of the decree which adjudges that the complainant is entitled to have the benefit of the mortgage in suit, to no further extent than it may be found upon an accounting that Denton owes to Hogencamp the money realized by him upon the stock of the Second National Bank owned by Hogencamp and transferred and loaned by him to Denton, and it is insisted that the court should have held that under the proofs, the Second National Bank of Jersey City held for itself the mortgage in suit as collateral security for the payment of the loan from the 20th day of August, 1901 (at which time the stock was delivered to Denton pursuant to Shaw's order and this mortgage was recorded), down to the present time, and that Denton permitted Hogencamp to do as he did with the mortgage and the Second National Bank of Jersey City acquired it with the consent of the said Denton as collateral security and held it as such with the consent of Denton and that Denton and Shaw are estopped from denying the right of the Bank through its trustee to recover upon the mortgage its full face.

The Question Raised.

The petition of appeal recites further grounds of appeal (page 2), but the real question which is brought up by this appeal and intended to be argued is whether under all the circumstances of the case the Second National Bank held this mortgage in such a way that the day the foreclosure proceedings were instituted it was entitled to foreclose for the full amount of the mortgage, or whether as the court below held it could only foreclose for such amount as might be due upon the accounting from Denton to Hogencamp.

The Finding Below.

The Court below held that Denton had given the mortgage under such circumstances that Hogencamp had the power to pledge it with the Second National Bank of Jersey City originally as collateral security for the indebtedness represented by the original Shaw note of $24,000 subsequently changed into the two Shaw notes of $13,000 and $12,000 and had the right to specifically apply it as collateral security for the payment of the $12,000 note and that the Bank so long as this indebtedness continued could enforce the mortgage against Denton for the full amount due. But it held that certain events took place in 1905 by virtue of which Hogencamp secured the return to him of the Shaw notes and the mortgage by substituting therefor his own note for $35,000 covering this and other indebtedness and then repledged this Shaw note and mortgage to the Bank as security for the payment of his, Hogencamp's note, and that by reason of the fact that he got back for an instant of time this note and mortgage and then repledged them to the Bank the door was open so that Denton could make such defense against the bank as he might make against Hogencamp, and this notwithstanding the fact that it is admitted that the indebtedness now held by the bank is this identical $25,000 Shaw indebtedness in which is included the $12,000 note secured by the mortgage in suit, although it may also hold the note of Hogencamp, which it may enforce against Hogencamp. The indebtedness is not the indebtedness of Hogencamp. It is the same $25,000 indebtedness not paid.

The Contention of Appellant.

It is the contention of the complainant that there is no proof that this indebtedness of Denton or Shaw was ever taken up by Hogencamp; ever became owned by Hogencamp; there is no proof that he ever became entitled to the Shaw note and to this mortgage, and the situation is exactly the same now as it was prior to 1905, but that even if the Shaw notes and the Denton indebtedness came back to the possession of Hogencamp and this mortgage also came to his possession yet he had the right as between the bank and Denton to repledge the securities with the bank and the bank holds them free of any defense which might be made by Denton against Hogencamp.

But a comparatively small part of the immense amount of testimony in this case is necessary to be considered for the determination of this point, although it was necessary to print it all because it is so interwoven that it was impossible to excerpt such parts of it as it was necessary to consider. A great deal of the testimony is only material or relevant in case it be first found that Denton is entitled to make as against the bank such defense to this mortgage as he might make as against Hogencamp.

Argument on the Law and the Facts.

At the outset it must be kept in mind that under the circumstances in this case the bank is not charged with the knowledge of Hogencamp.

Bank vs. Christopher, 11 Vr., 437;
Stratten s. Allen, 1 C. E. Gr., 229;
Barnes s. The Trenton Gas Light Co., 12 C. E. Gr., 33;
DeKay vs. Hackensack, 11 Stew., 158.

It must also be kept in mind that the following facts are settled by the interlocutory decree from which no appeal has been taken by the defendants.

That upon the 23rd day of April, 1900, William Hogencamp went through the form of selling to Henry M. Denton 100 shares of stock of the Second National Bank of Jersey City at a valuation of $12,000 and received therefor two notes each dated April 23rd, 1900, made by Henry M. Denton payable to the order of himself at the Second National Bank of Jersey City. That Hogencamp retained in his possession the stock. That Hogencamp also held the mortgage made by Frank Hanford and wife to Henry M. Denton, dated January 16th, 1895, upon a one-half interest in the property in Jersey City owned by Shaw and also held the deed of the Lakewood property upon which the mortgage in suit was given. That upon the 23rd day of July, 1900, when the two $12,000 notes became due Hogencamp insisted that Denton should give him something which he would be able to use with the bank and thereupon Denton gave to Hogencamp a note dated July 23rd, 1900, for $24,000 made by R. L. Shaw to the order of himself payable at the Second National Bank of Jersey City, upon which note the Second National

Bank of Jersey City advanced $24,000. That at that time Hogencamp still retained the mortgage from Hanford to Denton which was actually assigned to Hogencamp upon the 1st of September, 1900, and also held the deed for the Lakewood property and secured from Denton the mortgage in suit on that property dated September 1st, 1900. That on August 21st, 1901, the letter, Exhibit 10, was written by Shaw to Hogencamp, president of the bank, in which letter Shaw directed that "the 100 shares of Second National "Bank stock heretofore left with you as collateral "security for my note for $24,000 be delivered up "to Henry M. Denton." That thereupon the stock was delivered to Denton and used by Denton for his own purposes and that the assignment of the Hanford mortgage was recorded and the Lakewood mortgage now in suit was recorded. That finally and upon the 27th or 28th day of August, 1902, the form of the Shaw indebtedness was changed and two notes were given, one dated August 27th, 1902, for $13,000 made by R. L. Shaw to the order of himself payable at the Second National Bank of Jersey City, and the other dated June 20th, 1902, for $12,000 made by R. L. Shaw to the order of himself payable at the Second National Bank of Jersey City, the reason for the change being that Shaw wanted to borrow $1,000 for his own purposes which was then included in the indebtedness, and the reason for the difference in dates being that there was an adjustment of interest. Both notes went through the bank on the same date, to wit, the 27th or 28th of August. That thereupon a mortgage was given by Shaw to Hogencamp for $13,000, Exhibit C-20, to secure the specific $13,000 note, and the Lakewood mortgage was still held as collateral security for the $12,000 note. That up to the year 1905 the bank held this mortgage in such a way that it was entitled

to foreclose it not charged with any defenses which might be made by Denton against Hogencamp.

This Denton and Shaw indebtedness was carried upon the books of the bank in "Call Loans" until charged into "Suspended Debt" under the direction of the Banking Examiner on December 22nd, 1904 (pages 269, 333). And remained in "Suspended Debt" until March 24th, 1906, when there appears a credit to "Suspended Debt" March 24th, 1906, "Bills Disc. $35,000."

The proof is perfectly clear that up until the 24th day of March, 1906, this Shaw indebtedness was carried in the books of the bank as unpaid notes in suspended debt with no credit against it.

It was sought to show that the payment of $38,802.95 which was made by Hogencamp on September 7th, 1905, in some way affected this indebtedness (page 270). This, however, was shown to be not a fact and it was shown that on October 17th, 1905, after the payment of this $38,802.95, "M. L. 1" was delivered, which is as follows:

> "For value received I hereby guarantee the payment on or before January 1st, 1906, of two certain notes made by Robert L. Shaw, one for $12,000 dated June 30th, 1902, and the other for $13,000 dated August 27th, 1902.
>
> "W. HOGENCAMP."

And the Vice Chancellor in his memorandum (page 74), disposes of this proposition by holding:

> "In my view the proofs show that on March 24th, 1906, he, Hogencamp, paid off to the Second National Bank the Shaw notes and became vested with title to such notes and to the collateral which had been held at the bank for their payment."

The Vice Chancellor's conclusion is that Hogen-

camp upon the 24th day of March, 1906, gave his note to the bank and on his note borrowed from the bank $35,000, which the bank credited to "Suspended Debt" to take up the Shaw notes (page 74), and that because of this bookkeeping arrangement the bank lost the position that it theretofore held of being free from the defenses which might be made by Denton against Hogencamp.

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I.

Hogencamp never became entitled to the Shaw paper and the mortgage in suit in his own right.

The oral testimony with respect to this item of March 24th, 1906, "Bills Discounted $35,000" which appears in the "Suspended Debt Account" (page 336), is as follows:

20 William Hogencamp (page 319:

> "In what respect were you mistaken? A. In this respect, that that Shaw indebtedness was not taken up at the Second National Bank by me; **it is there still; it is there to-day;** and when I had testified that I had taken it up I was under a misapprehension; I got it mixed up with another transaction entirely different."

30 Page 335. In referring to the "Suspended Debt Account" which appears on page 336, he testifies as follows:

> "Was the 'suspended account' disposed of in this ledger? A. Yes, sir.
>
> "Q. It was paid off in full? A. Yes, sir; **it was not paid for, it was credited in full.**"

Page 347, he testifies that he was mistaken when he had previously testified in the suit of *Richards vs. Shaw* that the bank loaned him $35,000 on

40 certain security to pay off the bank.

On page 371 he testifies with regard to M. L. 1:

"Q. Now referring to this paper, dated October 17th, 1905, M. L. 1, will you refresh your recollection and tell me whether the note of $12,000 here in suit was paid on that date? A. It was not paid on that date.

"Q. And does that refresh your recollection as to what you did with respect to the note on that date? A. Yes.

"Q. What did you do with respect to the note on that date? A. **I guaranteed the payment.**

"Q. Now, Mr. Hogencamp, have you before you the Ledger No. 8, and if so, please turn to the 'Suspended Debt Account.' A. I have it; it is page 68.

"Q. Now can you tell me in what way the $25,000 Shaw indebtedness was taken out of that account? A. Yes, sir.

"Q. How? A. By a credit on March 24th, 1906, as it appears on the Ledger here of 'bills discounted $35,000.'

"Q. And what did that include besides Shaw $25,000? A. The $10,000 balance of Pratt and Wellman note.

"Q. Now what is the effect of bills discounted? What is meant by that? A. Well, that is a matter, I suppose, for the bank. **I suppose the bank changed that for matters of bookkeeping or something of that sort.**

"Q. Did you pay or was the Pratt and Wellman and the Shaw indebtedness paid to the bank? A. No, sir.

"Q. What did you do with respect to the Pratt and Wellman and Shaw indebtedness? A. I guaranteed the payment of it.

"Q. And in what way did you guarantee the payment at that time? A. I think by giving them a note. I do not recollect.

"Q. By giving a note to the bank? A. By giving a note to the bank, I think."

Page 377:

"Q. Where did the Shaw note for $13,000

and the $12,000 note respectively remain after you had given them to the bank? A. They remained in the bank, as I recollect.

"Q. Did you ever come into possession of them as your own property? A. No, sir.

"Q. And what did you do, if anything, with respect to their payment? A. I guaranteed the payment of them."

Page 619, General Ledger No. 8, in which there is included "Bills Discounted," was shown to the witness and it was shown that there was a charge in General Ledger No. 8 to "Bills Discounted" of $35,000, which was a complementary item to the credit to "Suspended Debt Account" of March 24th, 1906, and the charge therein to "Bills Disc. $35,000," and on page 620 Hogencamp testified as follows:

"Q. Do I understand the witness to say that that is the complementary entry to the item on page 68, under the heading Suspended Debt Account as follows: '1906, March 24th, Bills Disc., $35,000'? A. Yes, sir.

"Q. Have you refreshed your recollection as to whose bills those were that were discounted? A. **I think it was merely a bookkeeping entry.**

"Q. But that Bills Disc. item, as I understand the transaction, was the discount of your note for $35,000 which was then credited, or the proceeds of which were then credited to the Suspended Debt Account—is not that the truth? A. **Well, I don't think it was discounted. If it had been it would have been on the Discount Journal."**

If as a matter of fact there had been upon the 24th day of March, 1906, a note discounted to take the place of the Shaw indebtedness this note would appear on the Discount Journal.

On page 623:

"Q. Have you examined to find out whether it appeared in the Discount Journal, where it ought to appear? A. Yes, sir.

"Q. And it don't appear there? A. It don't.

"Q. In view of the fact that the note does not appear in any other books of the bank, with the exception of the daily credits and daily debits and Suspended Debt and Bills Discounted in the General Ledger, what would you say as to whether your note had actually been discounted, in that sense of the term? A. **I do not think it had been actually discounted.**

"Q. And what would you say, then, as to those entries in that book? A. Well, they undoubtedly had the note of $35,000 there. I do not think it was actually discounted on the Discount Journal.

"Q. What was the purpose, then, of making those entries? A. To take it out of Suspended Debt Account and clean that account out, making it a live transaction."

If the Bank had discounted Hogencamp's note and used the proceeds of that note to pay off the Shaw indebtedness the note would appear as discounted in the Discount Journal and the proceeds of the note would have been credited to Hogencamp's account and he would have drawn a check to the Bank to take up these notes. This practice is the one pursued in all banking institutions. Not only does the note not appear upon the Discount Journal but no credit went to Hogencamp's account and he drew no check to take up the Shaw indebtedness (page 650, Hogencamp's testimony).

"Q. How long prior to that time had you given that thirty-five thousand dollar note to the bank? A. I do not recollect that, sir.

"Q. Did you get credit on that day for $35,000? A. No, sir.

"Q. Nowheres? A. No, sir.

"Q. Now, you find nothing in the Discount Register which shows any bills discounted on that day? A. No, sir."

On page 271 Hogencamp testified:

"Q. And you thought it was true at the time you swore to it? A. **I believed it at that time, but I got mixed up on it. As a matter of fact those notes were not paid, and they are not paid, yet. I guaranteed them.**"

Samuel Ludlow, the president of the Second National Bank, testified, page 483, as follows:

"Q. And are these notes, one for $13,000 dated August 27, 1902, and the other for $12,000 dated June 20, 1902, held by that Bank? Made by Robert L. Shaw and one mortgage here, Exhibit C-19; were they held by that bank? A. Yes, sir.

"Q. And how long have they been held by the bank to your knowledge? A. Ever since I have been with the bank.

"**Q. Now, does the bank hold any additional security for the payment of those notes? A. Yes, sir.**

"**Q. What? A. They hold a note of William Hogencamp for $35,000 secured in addition to that, by mortgages on Mr. Hogencamp's Deal and Paterson properties.**

"Q. And how long have they held that note? A. Ever since I have been with the bank.

"Q. Has this $12,000 Shaw paper been paid? A. No, sir."

Page 487:

"Q. And at that time the bank had a note of $35,000 from Mr. Hogencamp and a mortgage on his Deal property, and a mortgage on his Paterson property as security to the bank that it would receive the money on a $12,000 note made by Shaw, and on a $13,000 note made by Shaw in the year 1902? A. Yes, sir."

Page 490:

"Q. Well, you testified yourself that when you came into the bank Mr. Hogencamp had al-

ready given a $35,000 note to the bank, did you not? A. Yes, sir.

"Q. Where is that note? A. We still have that note.

"Q. Well, that is the one Mr. Carey, I imagine, is asking about; that is down in the bank? A. Yes, sir."

And Mr. Ludlow testifies that this $35,000 item "Bills Disc." does not appear in the Discount Journal where it would appear if as a matter of fact it were actually discounted (page 491).

From page 511 to page 518 the complainant endeavored to show by Mr. Ludlow that the bank always treated the Shaw indebtedness as the primary indebtedness and the $35,000 note of Hogencamp as a guarantee and also endeavored to show the reason why the $35,000 Hogencamp note should not appear in the Discount Journal or in the other books of the bank (page 512), the anticipated answer being that the bank never treated Hogencamp's $35,000 note as a primary obligation and that it did not appear in the Discount Journal because, as a matter of fact, it was not discounted. That so far as the credit to suspended debt of $35,000 and the charge to Bills Discounted it was a mere bookkeeping item. The Court refused to permit this testimony. It is submitted that this was error. The final determination of the court was based upon a finding that on March 26th, 1906, by the use of the $35,000 note which has not been paid the Shaw indebtedness became paid and the $35,000 note became the primary obligation, and the mortgage in suit when it was repledged was open to any defense which might be made by Denton against Hogencamp.

It must be kept in mind that Denton was not a party to these transactions between Hogencamp and the bank. **Whether this $35,000 note was used to actually pay the Shaw indebtedness or**

was to be held as a guarantee of the Shaw indebtedness, as testified by Hogencamp and by Ludlow, depended largely upon the intention of the parties. No money was actually passed. It was a mere giving of paper. The court below has held that because the Second National Bank took this note of $35,000 from Hogencamp and credited suspended debt with $35,000 and charged Bills Discounted with $35,000 that Hogencamp became entitled to the Shaw notes and the Denton mortgage.

If at the time this note was handed to the bank it was understood that it would be a guarantee, as Hogencamp testified and his testimony and that of Robert S. Hudspeth is all there is on the subject, and if it was understood that Hogencamp should not be entitled to the Shaw papers until as a matter of fact his, Hogencamp's note, was paid, the reasoning of the Vice Chancellor would not apply.

It is submitted therefore that it was proper for the complainant to prove exactly how the bank treated this note. It was already in evidence that where a bill is actually discounted it appears in the Discount Journal and the proceeds are credited to the person whose account the bill is discounted for and he then draws a check to the bank if it is to take up an outstanding obligation. It was already in evidence that this $35,000 note did not appear in the Discount Journal and the proceeds did not appear in Hogencamp's account.

All that there was in the books of the bank was the credit to an account called Suspended Debt of $35,000 and the charge to an account called Bills Discounted of $35,000. The credit to Suspended Debt included the notes of Shaw aggregating $25,000 and the $10,000 of Pratt and Wellman. It had been testified that this was a mere book-

keeping item. That it was a change only in the method of charging it; it was a taking out of Suspended Debt and a charging to Bills Discounted, but that as a matter of fact no bills actually were discounted unless they were the notes of Pratt and Wellman and Shaw. No bills were discounted. No Hogencamp note was discounted because if it was, it would appear in the Discount Journal and in Hogencamp's account. **The item of $35,000 charged to Bills Discounted still appears upon the books of the bank as unpaid and in that is included this Shaw indebtedness still unpaid.**

Robert S. Hudspeth testified, page 450, that he was counsel for the bank and that the mortgage in suit was assigned to him as trustee for the Second National Bank (pages 452, 454, 456, 458).

"Q. How did they come to be assigned to you as Trustee for the Second National Bank? A. To put the collateral in proper legal shape for the benefit of the Second National Bank.

"Q. Now, give us the facts, just what took place, the whole history. A. These mortgages, to-wit, the mortgage on the Jersey City property made by Shaw; and the mortgage on the Lakewood property made by Denton, were in the name of William Hogencamp, without any indication that he held them as Trustee, or as collateral, or for the benefit of the Second National Bank, of which he was President at the time that the mortgages appeared to have been made and delivered to him. Mr. Hogencamp was requested to turn them over to me as Trustee for the Second National Bank, so that there could be no question as to the fact that they were collateral for the benefit of the Second National Bank; and the assignment was made by Mr. Hogencamp to carry out the trust under which he held them for the benefit of the Bank —to me.

"Q. When you refer to the assignment that Hogencamp made to you, do you mean the

assignment that appears in the record, from Harding to you? A. I mean the assignment that is here when I spoke of Hogencamp. **Mr. Harding was interpolated, unfortunately, by the assignment to him which never was effective, and, instead of it being destroyed and Mr. Hogencamp making the assignment to me, it was made by Mr. Harding carrying out what Mr. Hogencamp was to do.''**

From page 473 to 482 Hudspeth testifies that it was insisted by the banking officials that Hogencamp should in some way guarantee the Shaw indebtedness. That Hogencamp first intended to take up the Shaw indebtedness by borrowing $35,000 from Dwight S. Harding and that the assignment of the mortgage in suit were drawn from Hogencamp to Harding with the consent of the Bank for the purpose of putting such a transaction through. That this transaction fell through; that Harding never advanced the money; that the assignment to Harding never became effective; that then the banking officials insisted that Hogencamp secure in some way this Shaw indebtedness and that he did it by giving a mortgage upon his Deal property and upon his Paterson property for $35,000. He testified that Hogencamp never got the Shaw indebtedness or the mortgage for his own purposes and that he always held the mortgage in suit for the Second National Bank as collateral security for the Shaw and Denton paper (page 480) and that he, Hudspeth, holds them as trustee for the Second National Bank (page 481).

It is insisted that it was not proven that upon the 26th day of March, 1906, or at any other time William Hogencamp paid the bank and was entitled for a single instant of time to the Shaw notes and the Denton mortgage. That it is apparent that the real transaction was a guarantee by Hogencamp of the Shaw paper which guarantee was first in the form of a letter (Exhibit M. L. 1), and then took the form of a note secured by mort-

gages upon the Deal and Paterson property, but that neither the bank nor Hogencamp treated this as the primary obligation, but only as security for the payment of the Shaw notes. That the Shaw notes and the mortgages were always held for the use of the bank, first by Hogencamp as trustee and then by Hudspeth (the assignment to Harding never becoming effective) and that Hogencamp individually never acquired any interest in them. (See the law and cases cited at page of this brief).

And this brings me to the second point which is

II.

Under all the circumstances of this case the mortgages were delivered by Denton to Hogencamp in such a manner as that Denton cannot now set up against the bank defenses which he might set up against Hogencamp if Hogencamp were foreclosing.

Hogencamp testified (page 96) that the bond and mortgage came into his possession as president of the bank. To the same effect page 109. That when the two $12,000 notes dated April 23rd, 1900 became due on July 23rd, 1900, he told Denton that he wanted something that he could use and get money on in the Second National Bank and that thereupon in response to this request the $24,000 note of Shaw's was given which was discounted at the bank (page 128). That he held the 100 shares of stock as collateral security (page 147). That on the order signed by Shaw (Exhibit C-10) he delivered up the stock to Denton (page 148). That when the stock was taken out of the Second National Bank in pursuance of the order (Exhibit C-10), he had in his possession the mortgage upon which this suit is brought (page 172) and also the Hanford mortgage and

the assignment of that mortgage to himself, Hogencamp (page 172). And immediately upon the stock being taken out of the bank and delivered to Denton for Denton's use, he had the mortgage in suit and the assignment of Denton to Hogencamp recorded (page 173). That these mortgages were left originally with Hogencamp as general collateral by Denton and that when the stock was taken away from the bank they were turned over more especially to the Shaw notes. That when the loan was increased to $25,000 for Shaw's benefit (page 183), another mortgage was given to take the place of the Hanford mortgage covering the whole of the property which mortgage, as I have before stated, recites that it is to secure one of these notes (page 184). That that mortgage was taken by Hogencamp in trust for the bank and (on pages 184 and 185) he states why it was taken by him, rather than being taken by the bank directly. It appears that under the law a national banking institution cannot take mortgages. They get around the law by having the mortgage taken indirectly. That these mortgages including the mortgage in suit, were always held by him as president of the bank and when he left the bank turned over to his successor (page 187). That he never got the notes and mortgages for himself (page 187). Again, on page 251 he testifies that the stock was left with him as collateral.

The most important testimony with respect to these mortgages is that of Denton who was the original obligor and whose indebtedness the Shaw notes actually represent. He testified in the case of *Richards vs. Shaw*, read into the record of this suit (page 683) as follows:

> "A. Shaw went on and completed the stable and the repairs, and the amount—— I don't know what he spent—as he testifies. I heard nothing more about it until the following August. I was in the bank one day and Mr.

Hogencamp told me that the matter of Shaw's had not been adjusted and he wanted it fixed up in some shape, and that my matters in the Bank were in a very unsettled shape, and as there were judgments against me in New York, and more to be had probably, that I had better get them in some different shape, as they might be sued on in the State of New Jersey, and that the securities that were there and the mortgages that were there, and one thing and another, might be inquired into; and he asked me if I couldn't get Shaw to fix it in some different shape. I told him I didn't know, and he wanted me to go up and see.

"Q. What securities had you then at the bank? A. There was a mortgage on the property at Lakewood, New Jersey, which I had given Mr. Hogencamp, for $12,000 (The mortgage in suit); there was a mortgage there which Mr. Hanford had given me at the time he bought me out, or the time he and Shaw bought me out, for $12,000 on an undivided half of the stable property."

Page 684:

"Q. Now, you can tell us everything that took place there. A. Mr. Hogencamp explained to him that he would like to have the matter fixed up, the thousand dollar and other matters that were there—that he would like to have a mortgage given on the property and two notes for $12,000 each. It was a matter he said, between he and I, and it would not affect Shaw, and thereupon Shaw, as I understand, or as I remember, signed the two notes.

"Q. I show you a note marked 'G. W. B. 2, for identification, May 6, 1908'. Now, it appears that on the 27th day of August, 1902, there was an entry of $25,000 to the credit of Mr. Shaw in his pass book; do you know how that was made up? A. That was to take the place of two twelve thousand dollar notes which were in the bank, and a thousand dollars Shaw had had to complete the building.

"Q. What do you know about those notes—what was the source of them, what was the

origin of them? A. **I know that notes were given originally for the purchase of one hundred shares of the National Bank stock of the Second National Bank.''**

Page 685:

"A. The transaction was this: Mr. Hogencamp transferred to me one hundred shares of the stock of the Second National Bank, at a valuation of $240 a share, in other words $24,000. At that time I had a deed on Lakewood property, which I owned free and clear; and I had this mortgage of Hanford's on the undivided one half of the Rink stables in the bank. *I gave Mr. Hogencamp two twelve thousand dollar notes, to the best of my recollection, secured by a mortgage which I gave him then on the Lakewood property and the mortgage which I had of Hanford's on the undivided one half of the stable.* The stock was assigned to me, but left at the bank. Shortly after that Mr. Hogencamp took me down and introduced me to Mr. Hardenburgh, who was then President of the Commercial Trust Company, a few doors below the Second National Bank, and says: 'Mr. Hardenburgh, Mr. Denton can tell you what he wants.' I told Mr. Hardenburgh I would like to borrow six thousand dollars on fifty shares of the Second National Bank's stock. That, as I remember, was in August, 1901, to the best of my recollection. He says, 'Certainly, Mr. Denton, we are very glad to accommodate you.' He gave me the money. I took it up and gave it to Mr. Hogencamp."

It was proven in the case and found by the memorandum of the Vice Chancellor and settled by the decree that this six thousand dollars was spent for Denton's benefit.

Page 687, referring to the giving of the mortgage in suit and leaving it at the bank.

"Q. Collateral to some of your paper or Mr. Shaw's paper. A. At the time I commenced getting in trouble I took the deed for the

Lakewood property and the Hanford mortgage down there and left them in the bank; I did not owe the bank a dollar at that time. *But afterwards I borrowed on them to pay for this stock. I borrowed on the Lakewood property by giving a mortgage to Mr. Hogencamp for* twelve thousand dollars, and assigning this mortgage (referring to the Shaw mortgage which was the subject of the suit in *Richards vs. Shaw*) for twelve thousand dollars on behalf of the stable.

"Q. And for one note you gave the Lakewood mortgage of $12,000? A. Yes, sir."

Page 689:

"Q. Don't you know that all the discounts you were getting were discounts made for you by the Second National Bank? A. Well, of course, I knew nothing about it but I supposed so.

"Q. You supposed so? A. Yes."

Page 700 he testifies:

"Q. Well, how was it that you purchased at that time, from Mr. Hogencamp, this stock, what was the true transaction about it? A. Well, prior to that I had been a large operator in New York in real estate, and had been helped, through the Second National Bank and Mr. Hogencamp, with large amounts of money, and on April 2nd, 1900, I paid the bank with a check to Mr. Hasking's order $57,411.09 to the best of my recollection, which paid the indebtedness to the bank. After that this stock was assigned to me by Mr. Hogencamp, to assist Mr. Hogencamp as I understood it. He wanted to raise some money, and he owned this stock and he couldn't borrow from the bank **and he could borrow on my notes with these mortgages, as security, and I could also use the stock to make any loans on,**—in other words, I was trying to assist Mr. Hogencamp."

It was proven in the case that every dollar which was obtained by this one hundred shares of

stock from the Commercial Trust Company of New Jersey, $6,000, and which was obtained from the Hudson Trust Company $13,500 was used for the benefit of Mr. Denton and the Vice Chancellor finds as a matter of fact that the proceeds of the one hundred shares of stock was actually used for Denton's benefit to Denton's knowledge.

On page 704:

> **"Q. And weren't you securing and intending to secure the Second National Bank by any of the collateral that you put up for discounts made for you or for your benefit? A. I wanted to keep the Second National Bank right in every respect."**

And on page 778 Denton testifies in this case as follows:

> "You have heard Mr. Hogencamp's testimony relative to a certain stock transaction between yourself and Mr. Hogencamp. Will you state what occurred in connection with that stock transaction, beginning at the beginning? A. During the month of April, 1900 I was in the bank one day—in fact, I used to be in almost every day, very frequently—but this day in particular Mr. Hogencamp says 'Denton, I have been a good friend of yours in the past, done you a lot of favors; now I want you to do me a favor.' I asked him what it was. He said he wanted to transfer to me one hundred shares of the stock of the Second National Bank, which he owned, at a consideration of $24,000. He says 'you have a deed to the Lakewood property here in the bank; you also have a mortgage from Hanford on the undivided one half of the stable property; **I would like to have you give me two notes for $12,000 each and secure the notes by a mortgage on the Lakewood property for $12,000 and an assignment of the Hanford mortgage for a like amount. I can then use your notes in connection with those mortgages and you can use the stock to borrow money outside, which I cannot use in the bank.'**"

On page 800:

"Q. For what purpose was the Lakewood mortgage and the assignment of the Hanford mortgage made to Mr. Hogencamp? A. To assist him in using the notes, the two $12,000 notes which I gave him on April 23rd, 1900."

Page 839:

"Q. And you have testified that what Mr. Hogencamp said was that he had helped you out; and that he wanted you now to help him out; that you had there the deed for the Lakewood property and the Hanford mortgage, and that with the assistance of the Hanford mortgage and the deed of the Lakewood property he could use the notes and get the money for your business purposes? A. Yes, sir."

Page 844:

"Q. The notes which you gave to Mr. Hogencamp, dated April 23rd, 1900, were three months notes; the due date was July 23rd, or July 26th, with three days' grace,—now with those facts in your mind, can you tell us anything about the delivery of that Shaw note? A. The Shaw note being for $24,000 dated July 23rd, 1900, and being given to take up the two $12,000 Denton notes. A. I have nothing definite in my mind other than at one time, but I couldn't state when, Mr. Hogencamp said on account of the condition I was in New York, and of judgments which had been obtained or would be obtained, or any trouble I might get in, they might get me in trouble here regarding the deed to the Lakewood property and the mortgage of Hanford's which were in the bank, that they might be inquired into, and at that time there was a change made, and I suppose that was the time. Now, that is the only recollection I have."

Page 845:

"Q. Well, did you see him do it; did you get him to do it; did you bring them together, or what were the facts? That is what Mr. Lane is asking. A. Why I might at that

time—I cannot recall distinctly—but I no doubt at that time carried out Mr. Hogencamp's wishes to change it to accommodate him, but I have no recollection any further than the notes show.

"Q. And that $24,000 note was for the purpose of permitting Hogencamp to get the $24,000, was it? A. I presume he used it for that purpose I don't know.

"Q. You presumed so at the time it was delivered did you? A. I supposed it was for that, I didn't know.

"Q. You did not give it to him for a memorandum, did you? A. I did not.

"VICE CHANCELLOR: He says he supposed the purpose the $24,000 note was created on it."

(This note which is referred to is the $24,000 Shaw note made July 23rd, 1900 to take up the two $12,000 Denton notes dated April 23rd, 1900 and the $24,000 Shaw note was actually discounted at the bank and the money advanced.)

The most important testimony is contained on pages 847, 848, 849 and is as follows:

"A. I didn't know whether they were secured, or not. Mr. Hogencamp wanted the mortgage so he could use it in connection with the notes.

"Q. You thought the notes were secured by the mortgages, didn't you? A. I only knew what he said; he said we might have the mortgages to use in connection with the notes.

"Q. And you finally gave them to him on September 1st, 1900? A. I think that was the date.

"Q. That is the date. He wants to know now whether it was for the purpose of using them in connection with the notes? A. As he saw fit.

"Q. As he saw fit? A. Yes, sir."

Page 854:

"Q. And you cannot tell us why the mortgage and assignment were recorded upon the

22nd day of August, immediately after that letter? A. I cannot. That was a matter left entirely with Hogencamp."

Page 855:

"Q. When the indebtedness was increased to $25,000 and the Shaw note of $24,000 was split up so there were two notes, one of $12,000 and one of $13,000 signed by Shaw, tell us what took place then, how it came to be done? A. Well, the bank or Mr. Hogencamp wanted the matter changed in that shape, and wanted me to go up and see Shaw about it.

"Q. Why did he want it changed? A. He didn't say.

"Q. No reason for it? A. Well, he spoke merely in connection with it—I think the conversation started regarding the overdrafts which Shaw had there, and he wanted it fixed in some shape, and wanted to know if I couldn't get Shaw to fix it in that shape to accommodate him. I told him I didn't know, I would go and see Shaw.

"Q. In what shape? A. Well, he wanted this mortgage changed, and wanted a mortgage on all the property and all that.

"Q. Tell us exactly what he said and what you said? A. We were in the bank, and Hogencamp says 'This matter of overdraft of Shaw's is in bad shape, and never has been straightened up, and I would like to have you go up and see if Shaw won't change this mortgage of Hanford's and give me a mortgage on the entire Stable.' He said, 'It is a matter between you and I, and won't affect Shaw.' I told him I would go, and see Shaw, and see what he would say, and I went up and met Shaw at the stable, the Rink Stable, and told him what Mr. Hogencamp wanted, and he said he wouldn't do it. Finally we went to the bank, Mr. Shaw and I, and we talked it over with Mr. Hogencamp, and Mr. Shaw told him, in my presence, that it was merely to straighten up matters between him and I regarding the stock transaction, and that it was only to straighten up regarding the overdraft, and

Shaw would only be held for $1,000; and Shaw said: 'If that is the case I am willing to accommodate you, and then the papers were arranged.'

"Q. Having now told us that you remember perfectly that in August of 1902 you and Mr. Hogencamp and Mr. Shaw were together at the bank, and that Mr. Shaw had then overdrawn his personal account at the bank, and that Mr. Hogencamp had expressed a desire to have Mr. Shaw made a mortgage on the whole of the Rink Stable, upon which, through the Hanford mortgage, Hogencamp then had a lien upon one half of it, and also having told us that he wanted Shaw to make notes, one of $12,000 and one of $13,000 was it your understanding that, as to $24,000 of those notes, they were to take the place of your two $12,000 notes that you then had in the bank? That is what Mr. Lane is asking? A. I did not give the matter much thought, outside of the advisability of Shaw giving a mortgage on the entire stable when Hogencamp only had a mortgage on a half. That concerned me more than my notes; I didn't think about them.

"Q. Well, what notes were they going to secure? A. Well, I suppose it must have been my notes; I did not know about any other notes.

"Q. Don't you know, as a fact, that it was the notes that had been given for the stock? A. I couldn't say, as regards that, what I thought about it.

"Q. Well, what other notes could it have been? A. I don't know of any other notes I had in the bank.

"Q. Well, what other purpose could have been served by Mr. Shaw, giving a note for $12,000 and a note for $13,000 and a mortgage, excepting so far as he, Shaw, personally was concerned, to fix up this matter of overdraft, and so far as you and Hogencamp and Shaw were concerned, to serve the same purpose that your two $12,000 notes had theretofore served? A. They would serve the same purpose."

Page 858:

"Q. The Shaw mortgage of $13,000 was given as a substitute for the $12,000 Hanford mortgage, was it not? A. I think that was the understanding."

Page 892:

"Q. Did you testify in the case of *Richards vs. Shaw,* page 147, of the record:

" 'Q. Then you say these mortgages were given to Hogencamp as collateral security for the payment of those two notes? (Referring to your two notes of twelve thousand dollars which you had given for the stock) A. Yes, sir.'

"Q. Did you testify to that? A. I did, yes, sir.

"Q. Is it true? A. **Well, they were given to Hogencamp to use in any way he saw fit in connection with the stock transaction; not particularly as collateral; I did not know what he wanted them for; it was only supposition on my part.''**

It appears therefore by the admissions of Denton that on April 23rd, 1900, he at least went through the form of purchase from Hogencamp of 100 shares of the Second National Bank stock at $240 a share and gave him two $12,000 notes dated April 23rd, 1900, and also left with Hogencamp the Hanford mortgage of $12,000 on the Rink property owned by Shaw and a deed of the Lakewood property and that he did this, as he expressed it, because Hogencamp stated to him that he, Hogencamp, could use the notes of Denton secured by the mortgages to get money from the bank and that he Denton might take the stock and use it for the purpose of raising money outside; Hogencamp not being able to raise money at his own bank upon the stock of that bank; that in July 23rd, 1900, it being represented to Denton by Hogencamp that Hogencamp could not use the Denton notes for some reason in the Second Na-

tional Bank, Denton secured the giving by Shaw of the $24,000 note dated July 23rd, 1900, and upon the representations that Hogencamp could use this $24,000 Shaw note in connection with the mortgages to get money from the bank and that he, Denton, actually upon the 1st of September, 1900, executed a mortgage upon the Lakewood property which is now in suit, and of which property Hogencamp up to that time held the deed and actually executed an assignment of the Hanford mortgage to Hogencamp. That this was done for the purpose of securing the bank or as Denton expresses it, two or three times, **to be used by Hogencamp in such manner as he saw fit for the security of the bank.** The language used by Denton, to wit, that this mortgage in suit was given to Hogencamp to use in such manner "as he saw fit" for the security for the bank is important because it is insisted that even if the facts were as indicated by the Vice Chancellor, to wit, the substitution of the note of Hogencamp for $35,000 upon the 26th day of March, 1906 for the then existing $25,000 Shaw indebtedness in which was included the $12,000 note secured by the mortgage now in suit and the bank retained the Shaw note and this mortgage, or to use the language of the Vice Chancellor Hogencamp repledged them, the bank can recover for the full face of the mortgage because the authority given by Denton to Hogencamp was absolutely unlimited in extent. He was to use the mortgages and the notes in such way as he saw fit. It was not proven that this authority was at any time changed or circumscribed. That the $24,000 Shaw note dated July 23rd, 1900 actually was discounted by the bank and moneys paid out upon it. That on August 20th, 1901, Denton actually wanted to use the one hundred shares of stock which theretofore had been held by Hogencamp at the bank and procured from Shaw a letter directed to Hogencamp asking Hogencamp

to turn over to him, Denton, these shares of stock, which it appears by the letter Hogencamp at that time was holding as specific collateral against the $24,000 note. Hogencamp's testimony and that of Denton is not much in conflict with respect to this mortgage transaction. Hogencamp says that the mortgage was left with him, Hogencamp, as general collateral to protect the bank. Denton says that it was left with Hogencamp to use as he saw fit, for the purpose of raising money—of protecting the bank. Hogencamp in pursuance of the letter sent by Shaw, (Exhibit C. 10), directing him to deliver to Denton the 100 shares of stock actually did deliver it to Denton and Denton got the benefit therefrom. That immediately after the delivery of the stock the mortgage in suit was recorded and the assignment of the Hanford mortgage, thus specifically applying them to this particular indebtedness to wit, the $24,000 Shaw note which was given in place of the two $12,000 Denton notes dated April 23rd, 1900, the original obligation being Denton's. That on August 27th, 1902, Shaw having overdrawn his account to the amount of $1,000 the two notes were given one for $13,000 dated August 27th, 1902, and the other dated June 20th, 1902 for $12,000, the difference in date being due to adjustment of interest and at that time a new mortgage was given by Shaw for $13,000, (Exhibit C-20), upon the entire Rink Stable property, on a one half interest in which the Hanford mortgage was a lien, which new mortgage specifically states that it is security for the $13,000 note leaving the Lakewood mortgage now in suit security for the $12,000 note.

The form of this indebtedness never subsequently was changed so far as written evidence is concerned. The Vice Chancellor, of course, properly held that under these circumstances the bank was entitled to enforce both against Shaw and

against Denton, the note in the first place for $12,000; in the second place the mortgage now in suit. In December, 1904, this Shaw indebtedness aggregating $25,000 was charged by the bank into an account which was called "Suspended Debt" and on March 26th, 1906, this account was credited with "bills disc. $35,000" and the account of the bank in the general ledger entitled "Bills discounted" was charged with this amount of $35,000 in which is included the $25,000 Shaw indebtedness. It remains unpaid in the account called "Bills Discounted" and the oral testimony is to the effect that no part of it ever has been paid.

It appears that because of the fact that Hogencamp was personally interested in some of these transactions the bank insisted that he guarantee the payment of this $25,000 indebtedness and he did so on the 17th day of October, 1905, by a writing.

The testimony is to the effect that subsequently Hogencamp endeavoring to raise $35,000 from Dwight S. Harding in order to take up the indebtedness, but that he could not do so. In anticipation of Harding advancing the $35,000 the assignment was drawn of the mortgage in suit to Harding which, however, never became effective as testified to by Hudspeth, counsel for the bank, because Harding did not advance the money. That after the deal with Harding fell through in order to further guarantee the bank Hogencamp delivered the promissory note for $35,000 which he secured by giving mortgages on his property in Deal and in Paterson. The testimony of Hudspeth, Ludlow and Hogencamp is all to the effect (I have specifically cited most of it), that this mortgage in suit and notes of Shaw in suit were always held for the bank; that the bank never parted with possession of them; that Hogencamp never had them for his own use; that he never had any indi-

vidual interest therein. That the note of $35,000 was not given in payment of the Shaw indebtedness or of this mortgage but as a guarantee of its payment. That the credit of Suspended Debt of $35,000 and the charge of $35,000 to Bills Discounted were mere bookkeeping items; that as a matter of fact no note was actually discounted and no money actually passed. This is shown by the fact that the transaction does not appear in the Discount Journal and the bank does not appear to have advanced to Hogencamp through his account any $35,000 and there is no check out of his account to the bank for $35,000 which would be the form the transaction would take, if in fact it was intended by the parties that this Shaw indebtedness should be paid by the proceeds of the $35,000 note and the Shaw indebtedness and the mortgage in suit should be held by the bank as security for the $35,000 instead of the reverse.

The Vice Chancellor excluded evidence of intention which was erroneous, but even so it is insisted that there is sufficient in the case at the present time to show that there was no intention by the acceptance of the $35,000 Hogencamp note to pay the Shaw indebtedness.

Inasmuch as the fact is that this $35,000 Hogencamp note has not been paid, **the burden was upon the defendant to show that the bank intended by the acceptance of the $35,000 Hogencamp note to release the Shaw indebtedness even for an instant of time.** It is by finding that the bank intended for an instant of time to release this Shaw indebtedness so that Hogencamp became vested with an individual right therein that the Vice Chancellor finds that the transaction is open to such defenses as Denton might make against Hogencamp.

It is the settled law of this State that the acceptance by a creditor either of an obligation of the debtor or of a third party does not discharge

the prior obligation unless there is such an intention expressed.

This Court said in the *American Brick Co. vs. Drinkhouse,* 59 N. J. L., 464:

> "In *Swain vs. Frazier,* 8 Stew. 326, this Court adjudged that the acceptance of the debtor's note for a pre-existing debt would not discharge the original debt unless the creditor agreed that such should be its effect. An extension of the same doctrine to the acceptance of the notes of third persons is sanctioned by the weight of authority, although it is modified in some jurisdictions by a rule that the acceptance of such notes raises a presumption of fact in favor of the discharge of the prior debt."

Ely vs. James, 123 Mass., 36;
Brigham vs. Lally, 130 Id., 485;
Kilpatrick vs. Home Building & Loan Association, 119 Pa., 30;
James vs. Hackley, 16 Johns., 273;
Noel vs. Murray, 13 N. Y., 167;
Youngs vs. Stahelin, 34 Id., 258;
National Bank of Newburgh vs. Bigler, 83 Id., 52;
Freeholders vs. Thomas, 5 C. E. Gr., 39;
2 Am. Lead. Cas., 263;
1 Sm. Lead. Cas., 565, sec. 451.

The general rule is expressed in 30 Cyc. 1194 as follows:

> "In the absence of an agreement between the parties that it is to be received as payment, the common law rule which prevails in England and has been adopted without question in nearly all of the states in this country is that a draft or bill of exchange, acceptance, order, or promissory note, of the debtor is not a payment or an extinguishment of the original demand. And the same rule applies to the bill, note, order, or acceptance of a third person given by the debtor to the creditor."

It is insisted, therefore, that in the absence of

an agreement at the time this Hogencamp note of $35,000 was delivered to the bank that it should be a payment of the Shaw indebtedness, it cannot be considered as payment. The fact that $35,000 was taken out of Suspended Debt on March 26th, 1906, and charged in the General Ledger to Bills Discounted is not sufficient evidence of an intention to treat the $35,000 note of Hogencamp's as a payment of the Shaw indebtedness, particularly in view of the fact that it does not appear as a Bill Discounted in the Discount Journal and it does not appear that the bank advanced to Hogencamp $35,000 and put it to the credit of his account so that he might draw a check to the bank for the $35,000 to pay the old Shaw indebtedness, the evidence being without contradiction that if this $35,000 note of Hogencamp's was in fact discounted it would appear in the Discount Journal and if the bank had advanced $35,000 upon it with which the Shaw indebtedness was paid it would appear in Hogencamp's account; and particularly in view of the testimony of Hogencamp Hudspeth and Ludlow that the $35,000 note of Hogencamp's **was not intended to be a payment of the Shaw indebtedness even for an instant but was intended to be a guarantee** and the fact that the Shaw notes and this mortgage remained at the bank, is now in the possession of the bank and the testimony of Hogencamp, Hudspeth and Ludlow to the effect that the mortgage was always held in the first instance by Hogencamp and in the second instance by Hudspeth as trustee for the bank, the assignment to Harding never becoming effective.

The bank is not to be treated in any other way than an individual. If an individual had held these Shaw notes with this mortgage in suit as security and had insisted that a third person, to wit, Hogencamp, was also responsible for the indebtedness and had taken from Hogencamp a

$35,000 note under the circumstances under which this bank took that note, there is no question but that under the cases the transaction would not have been considered payment. And even if the individual had in an account which he carried called Suspended Debt in which he had entered the Shaw indebtedness credited that account with $35,000 and immediately charged it into another account which he had called Bills Discounted still it would not have been considered as payment. And this even if there was no proof as there is in this case that at the time it was delivered it was not intended to be payment but was intended to be a guarantee. The position of the bank is stronger because by the undisputed testimony that if the bank had intended it to be payment the $35,000 note would have gone through the regular routine, would have been actually discounted in the Discount Journal, its proceeds would have been put to the credit of the person who discounted the note and that person would have drawn a check to the bank to take up the prior indebtedness.

The Vice Chancellor suggested in his memorandum, (pages 78 and 79), that the bank must have advanced $35,000 upon this note of Hogencamp's because if it had not it could not hold Hogencamp upon the $35,000 note. This is a false assumption. It must be remembered that Hogencamp personally was interested in these loans. He personally got the benefit of the $24,000 Shaw loan. He was the president of the bank. He was legally responsible. On October 17th, 1905, he guaranteed the indebtedness. As a further guarantee he delivered the note of $35,000 secured by the mortgages on his Deal and Paterson property. Unquestionably the bank could hold Hogencamp on his obligation irrespective of whether in fact it had discounted the note.

The Vice Chancellor further suggested that any right of the complainant to recover must depend

upon the enforcibility of the note made by Shaw dated June 30th, 1902, upon the ground that this mortgage in suit was given to secure specifically that note and unless that note is enforcible as against Shaw the mortgage cannot be enforced. This also is a false assumption.

It is necessary to look at the transaction in its entirety in order to reach a proper conclusion. It is true that Shaw was an accommodation maker of the note dated June 20th, 1902, and it is true, of course, that if that note is paid it cannot be enforced against Shaw, or if it got into the hands of Hogencamp it could not be enforced against Shaw but there is a clear distinction between enforcing the bond and mortgage in suit and enforcing the note.

The obligation originally was an obligation of Denton's and as Denton testifies, the mortgage was delivered to Hogencamp to use "as he saw fit" to secure the bank, "to keep the bank right"; "to get money from the bank". That he left everything to Hogencamp. He testifies that the original transaction under which the stock was, in form, as he says sold to him, was for the purpose of permitting Hogencamp to use the mortgages to get money from the bank and to permit Denton to get money upon the stock. It does not appear that at any time he rescinded the authority which he gave to Hogencamp. Hogencamp up to the 26th day of March, 1906, held these mortgages as trustee for the bank to secure the bank in any respect "as he saw fit"; Shaw did not deliver his note to Hogencamp under any such wide grant of authority. Therefore while it may be that the transaction between the bank and Hogencamp on March 26th, 1906, would release Shaw from his obligation upon the note, it cannot release Denton from his obligation upon the bond and mortgage. It must be remembered that this mortgage does not in

terms secure the note. It in terms secures the bond and the bond and mortgage together were to be used by Hogencamp **as he saw fit to protect the bank** and to secure the repayment to the bank of the indebtedness originally created by the discount of the Shaw note for $24,000 on July 23rd, 1900. If this indebtedness whether it be evidenced by the note of Shaw or by the note of Hogencamp is still existing, whether it be in the Suspended Debt account or in the Bills Discounted Account, the mortgage now sought to be foreclosed and the bond accompanying it is security for its repayment. That this indebtedness exists is beyond dispute; that the bank holds the bond and mortgage is beyond dispute. That it holds it as security for this indebtedness is beyond dispute. Then, therefore, if Hogencamp went through the form (which he did not) of repledging the mortgage and bond with the bank to secure this indebtedness it may be enforced by the bank to its full extent because Hogencamp did not exceed his authority as stated by Denton in his testimony. He did not as a matter of fact repledge the security. It never left the bank. The effect of the conclusion of the Vice Chancellor is that if this $35,000 note referred to by him be not paid, and the collateral put up by Hogencamp be worthless the bank cannot recover on this mortgage, if by an accounting it be shown that Denton does not owe Hogencamp, even though the original indebtedness secured by the mortgage will not have been in fact paid notwithstanding that Denton gave Hogencamp the mortgage to use as he saw fit to protect the bank and the bank actually parted with $12,000 upon the faith of the mortgage.

A case which is in point with that at bar is *National Bank of Newburgh vs. Bigler*, Court of Errors and Appeals of New York, 83 N. Y. 53, where the facts were as follows:

A mortgage was made by Thomas Bigler and

his wife and Mary Augusta Bigler to David Moore and Halsey R. Stevens, partners under the name of David Moore & Company. Moore died. The National Bank of Newburgh held the paper of J. Bigler & Company, endorsed by Moore & Company to a large amount. Upon the request of J. Bigler & Company and with the concurrence of Stevens and the assent of the executors of Moore it was arranged that the mortgage should be assigned to the plaintiff, that the paper held by it should be protested upon maturity and as each note matured J. Bigler & Company should make a new note for the same amount to be endorsed by Stevens and discounted by the bank the plaintiff, the proceeds to be credited to Stevens; with the proceeds of which he was then to take up the old note and pledge it to the plaintiff as security for the new one, the parties intending that the paper so held at the death of Moore was to be kept alive against all of the parties. This arrangement was carried out. It was held that it did not operate as a payment of the notes secured by the mortgage; that no presumption of payment arose from the taking of the renewal notes (although they were notes of a third party and were discounted by the plaintiff and proceeds put to the credit of Stevens, the third party and Stevens drew his check and took up the old note and repledged it just as it is contended was done in the case at bar); also that the assignment transferred to plaintiff the right to enforce the mortgage security. The mortgage was a mortgage made to Moore and Stevens as aforesaid, partners as Moore & Company by James Bigler and wife and Mary Augusta Bigler and was conditioned "as a continuing security and indemnity "to the mortgagees for and against all liabilities "they then had incurred or may thereafter incur "as endorsers, etc. in any form for J. Bigler one "of the mortgagors or the firm of J. Bigler Com-"pany." It will be observed therefore that Moore

& Company had only the right to enforce this mortgage to protect them against such obligations as they might assume upon endorsements for J. Bigler & Company; when David Moore died the bank of Newburgh, plaintiff, held the paper of J. Bigler & Company endorsed by Moore and Company to the amount of $91,500 which was soon to mature and an agreement was made then between J. Bigler & Company, Stevens, the survivor of Moore & Company and the executors of Moore, not joined in by the mortgagors which the court states, page 59 as follows:

> "That arrangement was in substance, that the mortgage given by the Biglers to David Moore and Halsey Stevens should be assigned by the latter, and the executors of the former to the Bank of Newburgh; that the paper held by the bank should be protested at maturity; and the liability of the indorsers fixed; thereupon as each note matured, Bigler & Co. were to make a new note of the same amount, Stevens was to indorse it, the bank to discount it, crediting the proceeds to him, and with such proceeds he was then to take up the old note and pledge it to the bank as security for the new paper discounted."

The Court says:

> "It is claimed by the appellants that this arrangement operated as a payment of the notes secured by the mortgage and the bank therefore had no right to foreclose."

Now it is to be observed that in this case we have the situation of a third person permitting a mortgage to be used to secure the endorser of paper of another party upon his endorsements; the mortgagors were purely therefore accommodation mortgagors. If the notes endorsed by the mortgagees were paid there would be no obligation on the part of the mortgagors; that when these notes were matured they were not paid by the mortgagees so that the mortgagees would have the

right to recover upon the mortgage because they had paid money upon their endorsements but were paid by a third person discounting his note in the bank, the proceeds being put to his credit and the notes then paid and repledged, yet it was held that there could be a recovery.

Just as in the case at bar this mortgage now sought to be foreclosed was given by Denton to Hogencamp to use as he saw fit to secure the bank to use as he saw fit to get money from the bank. It was so used. The bank actually paid the full consideration. The indebtedness has not yet been paid. It still holds the mortgage and note representing the indebtedness and the indebtedness. It is immaterial that it has also received the obligation of Hogencamp securing the same indebtedness. Until this indebtedness which was created upon the faith of the mortgage which was used for that purpose with the consent of Denton has been actually paid to the bank in substance, it is submitted that the bank may enforce the mortgage for the full amount, to wit, the sum of $12,000.

It is respectfully submitted that the interlocutory decree should be reversed and that the record should be remitted to the Court of Chancery with instructions to enter a decree in favor of the complainants for the foreclosure of the mortgage for the principal sum due upon the mortgage, to wit, the sum of $12,000 with costs and a reasonable counsel fee.

Respectfully submitted,

MERRITT LANE,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals.

ROBERT S. HUDSPETH and the SECOND NATIONAL BANK OF JERSEY CITY, *Complainant-Appellants,* and HENRY M. DENTON, MILLICENT S. DENTON and ROBERT L. SHAW, *Defendants-Appellees.*	On Bill, etc. On Appeal etc.

SUPPLEMENTAL BRIEF.

The respondents have filed a brief and supplemental memorandum in which they question the facts as found by the Vice Chancellor, although no appeal was taken by the respondent, and in which they also seek to introduce defenses not made in the court below, which renders it necessary to file this supplemental memorandum.

I had assumed that the facts as found by the Vice Chancellor could not be questioned except so far as they are made the subject matter of the appeal by the petition of appeal, and that so far as they precede the transaction of March 24th, 1906, I had assumed they would not be questioned because it is upon a consideration of the whole case, difficult for a trior of fact to reach a result more favorable to the respondents than did the Vice Chancellor.

The real question in this case depends upon the transaction of March 24th, 1906 when the Shaw indebtedness was taken out of suspended

debt and charged to bills discounted and the question of fact arises, whether this transaction was the payment by Hogencamp of the Shaw indebtedness by the substitution of his own note which has not yet been paid and the leaving with the bank of this mortgage as collateral or as the Vice Chancellor puts it a re-pledge or whether as testified to by both Hogencamp and Ludlow, the present president of the bank, the note of Hogencamp for thirty-five thousand dollars was merely taken as security for the Shaw indebtedness and the questions of law arise if the first proposition be found correct whether under the authorities of the *American Brick Co. v. Drinkhaus,* 59 Law 164, and the cases cited on page 38, etc., of the appellant's original brief the taking of the $35,000 note of, Hogencamp can be considered as payment inasmuch as it has not been paid, and a second question of law whether assuming that the transaction was exactly as the Vice Chancellor holds, under all of the circumstances the mortgages were not delivered by Denton to Hogencamp in such a manner as that Denton cannot set up against the bank defenses which he may set up against Hogencamp if Hogencamp were foreclosing because he gave authority to Hogencamp according to his own testimony to use the mortgages in such manner as he saw fit to secure the bank and irrespective of the proposition of law that the taking by the bank of the $35,000 note cannot be considered as payment until that note is paid, yet as matter of law because of this broad authority given to Hogencamp by Denton he had the right to actually repledge the securities with the bank as argued under Point II, page 23, etc., of the appellants original brief.

The respondent states that the statement of fact contained in the appellants' brief is not correct yet does not point out its inaccuracy in any respect The appellant has not in his statement of fact

only referred to the pages of the record where the testimony may be found but has also quoted in full the testimony which is important to the issue. On the contrary the respondent has inserted in his brief what purports to be statements of fact but which are not and he has omitted to refer the court to the pages of the record where the testimony may be found. Due to the arrangement of the respondents brief it is impossible to answer it in such a way as to point out each inaccurracy without reciting voluminous testimony and all that I will do with respect to this will be to point out several instances where the inaccuracy may be disclosed in a word.

There may be some justification for inaccuracies in the recitation of the facts because of the volume of the testimony and because it is impossible to take a line here and there and make anything of it, but there is no justification for endeavoring to bring into this case at this time the statute of limitations as counsel endeavors to do on page 22 of his original brief and this for two reasons:

First: The statute was not pleaded nor was it brought to the attention of the court below at any time. Counsel says he had no opportunity to plead the statute because the bill of complaint did not mention the note. The bill was amended on page 119. It recited the exact condition. It referred to the note, page 121, line 40. The defendants were given an opportunity to prepare and file such answer to the amended bill as they saw fit, page 125. They did not answer. Under these circumstances the statute could not be made available if it were a defense.

West Hoboken v. Syms, 49 Law, p. 546.
Brand v. Longstreet, 4 Law, p. 325.

and cases cited, under section 1 of an act entitled "An Act for the Limitation of Actions," 3 Comp. Statutes, of New Jersey, 3164.

Second: It is not a defense.

It is only necessary to refer to *Wagnor v. Watts,* 15 Vr. 129 affirmed 16 Vr. 184.

Colton v. Depew, Court of Errors and Appeals, 15 Dick. 458.

Palmer v. White, Supreme Court, 36 Vr. at p. 71.

Nor does there seem to be any justification for the contention at this time that the Shaw indebtedness was paid by the payment on September 7th, 1905 by Hogencamp to the bank of $38,802.95 because it was demonstrated in the trial that this was not a payment of the Shaw indebtedness. It is true that Hogencamp in the trial of the suit of *Richards v. Shaw* had testified that this $38,802.95 had something to do with the Shaw indebtedness, but not only did he straighten this out in his testimony in the pending suit, but it was demonstrated by documentary evidence that the Shaw indebtedness was not taken up by this payment. The books of the bank show that other indebtedness of Hogencamp aggregating $38,802.95 was taken up and that two items aggregating $35,000 were carried over one the $25,000 Shaw indebtedness and the other the $10,000 Pratt and Wellman indebtedness making exactly the $35,000 which amount was on March 24th, 1906 changed from suspended debt into bills discounted. The payment of $38,802.95 was made on September 7th, 1905.

On October 17th, 1905 after this payment the letter M. L. 1 was delivered which letter is as follows:

> "For value received I hereby guarantee the payment on or before January 1st, 1906 of two certain notes made by Robert L. Shaw, one for $12,000 dated June 30th, 1902, and the other for $15,000 dated August 27th, 1902, W. Hogencamp"

and the Vice Chancellor in his memorandum, page 74 disposed of this proposition by holding:

"In my view the proofs show that on March 24th, 1906 he, Hogencamp, paid off to the Second National Bank the Shaw notes and became vested with title to such notes and the collateral which had been held by the bank for their payment."

This payment on March 24th, 1906 referred to by the Vice Chancellor is the delivery to the bank of the Hogencamp $35,000 note which has not yet been paid.

The testimony of Robert S. Hudspeth and Samuel W. Ludlow also is to the effect that this Shaw indebtedness was, when Mr. Ludlow became president of the bank in April 1906, still unpaid. Hudspeth testifies as to the delivery of the guarantee on October 17th, 1905.

The contention of the respondent that the Denton mortgage never legally or equitably became collateral for the $12,000 note of Shaw of June 30th, 1902 is disposed of by the finding of the Vice Chancellor and by the recital in the interlocutory decree, page 90, to the following effect.

"And it further appearing to the court that the note of Shaw was used by Hogencamp at the Second National Bank aforesaid for Hogencamp's benefit and during the time that this original indebtedness existed and so long as it was continued by successive renewals of the original indebtedness by subsequently given notes the said bank was entitled to recover on this mortgage as collateral security the whole, or such part thereof, as still remains unpaid to it, of the original indebtedness."

And the statement in the memorandum, p. 87:

"What I find from the facts in evidence is that upon the date in question, April 23rd, 1900, Denton and Hogencamp made an arrangement of the following nature: they each wished to do whatever would enable them to obtain the largest amount of loans

from the banking institutions; Hogencamp, as a stockholder in the bank, could not obtain loans from that bank upon its own stock; other institutions probably would loan with this stock as collateral; Denton could not, upon his own mortgages, obtain loans upon his own notes; if Denton gave mortgages to Hogencamp and also notes which Hogencamp would endorse, money could have been obtained upon those notes with the mortgages as collateral. If in turn, Hogencamp put title to some of his stock in Denton, and took from him as apparent consideration notes, those notes would be used with the mortgages, as just stated, and Denton could take the stock and borrow at other institutions upon notes which he would give with the stock as collateral."

I have considered the documentary exhibits pages 2, 3, 4, 5, 11, 12, 13 and 14 of the original brief and it is difficult from a consideration of the exhibits and the oral testimony of Hogencamp and Denton not to come to the conclusion that this mortgage under foreclosure was held as collateral for the $12,000 Shaw note. It was held as general collateral to protect the bank so far as Denton was concerned up to the 20th of August, 1901, and at that time as Hogencamp testifies was applied to this $12,000. note. And that is demonstrated by the fact that on August 20th, 1901, Robert L. Shaw wrote to William Hogencamp a letter as follows:

"W. Hogencamp, Esq., President, Second National Bank, Jersey City, N. J. Dear Sir: Please deliver to Henry W. Denton the 100 shares of Second National Bank stock heretofore left with you as collateral security for my note for $24,000. Yours truly, R. L. Shaw."

This was the $24,000 note of Shaw's which had been discounted upon the 23rd day of July, 1900. The one hundred shares of stock was delivered to Denton and when it was delivered the mortgage made by Frank Hanford and wife to Henry

W. Denton and assigned to Hogencamp September 1st, 1900 and also the mortgage which is in suit here, were recorded. It is further demonstrated by the fact that on the 27th day of August, 1902, when the form of the indebtedness was changed into two notes one for $12,000, and the other for $13,000. a new mortgage was made by Robert L. Shaw to William Hogencamp for $13,000. to take the place of the Hanford mortgage which was for $12,000. and which was on a one-half interest in the property upon which the new mortgage was given which mortgage specifically recited:

> "This mortgage is given to secure the payment of a certain promissory note of even date herewith for the sum of $13.000. given by the said Robert L. Shaw, party of the first part, to William Hogencamp. (This is a mistake. The note was made to the order of himself), payable on demand at the Second National Bank of Jersey City."

The Hanford mortgage was surrendered and this left the $12,000. mortgage now in suit still as collateral for the $12,000. note. All as more fully set forth on pages 4, 5, 11, 12 and 13 of the original brief.

Counsel says on page 20 of his brief that it was not until the 22nd day of August, 1901, that the Denton mortgage for $12,000. was turned over as collateral to the Shaw note for $24,000. It is true that the mortgage was not specifically applied to the $12,000. Shaw note until the 20th day of August, 1901, but from the beginning had been left with Hogencamp by Denton to be used by Hogencamp in such manner as he saw fit to protect the bank or to raise money from the bank. Counsel says on page 20 that the bank did not part with anything of value on the 20th day of August, 1901, at the time this mortgage was specifically applied to the note of $12,000. He forgets that the bank at that time sur-

rendered the one hundred shares of stock which it had held as collateral for the Shaw note of $24,000. in pursuance of the letter signed by Shaw directing Mr. Hogencamp, the president of the Second National Bank to deliver that stock to Denton. On page 21 Counsel says that Hogencamp had no authority to use this mortgage to secure his own debt. Denton gave him no such authority.

I can do no more than to refer again to the memorandum of the Vice Chancellor on pages 86 and 87, to the terms of the interlocutory decree on page 90 and to the testimony of Mr. Denton himself set out in full from pages 23 to page 33 of the original brief, in which testimony Denton himself says that he gave these mortgages to Hogencamp and that the notes were delivered to Hogencamp to use in such way as he saw fit!

The endorsement of the note by Hogencamp without recourse.

In the first place there is no evidence that any such endorsement was on the note in this suit. The Vice Chancellor holds (page 81) that it was simply because "there is no conceivable reason why "he should not have made the same endorsement "upon both notes, since the whole transaction "was one and undivided; and whatever he did "with respect to one he undoubtedly in my judg- "ment did with respect to the other."

Hogencamp did not testify in this suit that any such endorsement was made on the note in suit. There is a conceivable reason why he should put it on one and not the other. In the matter of the note for $13,000 upon which there was this endorsement Hogencamp had succeeded in getting Leonard Richards to take up the note and as a matter of fact Richards paid the bank and took up the $13,000 note; actually got it and the mortgage securing it; and the suit of *Richards v. Shaw* was a suit brought by Richards to fore-

close upon this security. Hogencamp may have when the note passed to Richards made this endorsement. In the present case although negotiations were on with a man named Harding to take up this note the transaction never went through. The instruments were actually drawn and made but Harding fell down and did not put up the money. Therefore inasmuch as the note never passed to Harding but always remained in the bank, it may well be that Hogencamp did not make the endorsement on the note in suit. If he did he must have made it at the time that it was thought that Harding would step in, and in preparation for Harding taking it up. If he did it at this time it never became effective because his testimony and that of Hudspeth and Ludlow is to the effect that the bank never parted with this note. Hogencamp as president of the bank had custody of the note. Denton and Hogencamp were both using the bank, almost to the extent of a conspiracy to defraud the bank. Denton cannot therefore set up that the bank is charged with knowing what Hogencamp did to it, to the bank's detriment. If in fact the words were endorsed upon the back of the note and if they were endorsed at the time it was anticipated that Harding would take up the notes, Hogencamp may have done it at any period during the time the note was in the bank for he was president of the bank and charged with the custody of its papers.

Assuming that the endorsement was made, of which there is no evidence, if it was made in anticipation of Harding's taking up the note, it has no effect upon the pending controversy. And it is most reasonable to assume that this was the time it was done if it was done at all.

However, this endorsement, the finding of its presence resting upon the inference that Hogencamp must have put it on there because he did upon another note, this resting upon a mistaken idea

that there was no distinction between the method in which they were dealt with, the one of $13,000 which actually did have the endorsement on having been parted with by the bank and given to Richards and the present not not having gone through this procedure, and with no testimony as to when it was made, the most reasonable guess being that it was made in anticipation of being turned over to Harding in which event it would not have any effect whatever, is not sufficient to prove that the bank on March 24th, 1906 took the note of Hogencamp for $35,000 as payment in view of the fact that the course of procedure was exactly contrary to what it would have been had it been taken as payment. It would have appeared upon the discount journal, it did not; its proceeds would have been deposited to Hogencamp's account; they were not; Hogencamp would have drawn a check to take up the note, he did not; and in view of the fact that Hogencamp testifies distinctly that the note was taken as payment but only as security. Hudspeth and Ludlow is to the same effect. Again I draw the court's attention to the fact that the court excluded the testimony of Hudspeth as to conversations with Hogencamp at the time this note was taken and the testimony of Ludlow as to how the bank treated the note which was clearly erroneous, the question being what was intended. It cannot be said that Denton was not bound by these conversations or this method of treatment. He had no right to have Hogencamp take up this note so far as the bank was concerned. He is endeavoring to get the benefit from something which Hogencamp and the bank did. The burden of proving payment and the burden of proving that the note of Hogencamp's was accepted as paymet alike rested upon the defendant under the case of the *American Brick Co. v. Drinkhouse.*

Shaw is not to be considered in this case.

It may be that there would be some equity in the case in favor of Shaw if he were being pursued. It must be born in mind that this action is to recover nothing from Shaw. The mortgage which is being foreclosed is a mortgage made not by Shaw but by Denton, upon the property in Lakewood. The matter is to be determined as if the notes were the notes of Denton and not the notes of Shaw. It might very well be that because of the equities existing as between the bank and Hogencamp and Shaw that the bank could not recover in a suit against Shaw but that would not affect the right of the bank to take Denton's property in satisfaction of Denton's obligation. Shaw is a party only because he is a subsequent purchaser of the Denton Lakewood property.

In conclusion I desire to refer to the supplemental memorandum filed by the respondent. This also injects something into the case which was not in it below and not used below. If Denton has any equity at all in the two Hogencamp mortgages given by Hogencamp to the bank it is to have assigned to him Hogencamp's mortgages and for that purpose he should have filed a cross bill against the bank and against Hogencamp. Whether Denton is entitled to the benefit of these mortgages was not raised by the pleadings below nor litigated and is not before this court. The bank cannot be forced to stand the delay and expense of an accounting between Denton and Hogencamp when it holds a valid and enforcible obligation against Denton.

Respectfully submitted,

MERRITT LANE,
Of Counsel of Appellants.

New Jersey Court of Errors and Appeals.

Between: ROBERT S. HUDSPETH, Trustee, *Complainant-Appellant,* and HENRY M. DENTON *et al.*, *Respondents-Appellees.*	On Appeal from a Decree advised by Garrison, V. C.

BRIEF FOR APPELLEE.

Parties.

The parties are Robert S. Hudspeth and the Second National Bank, Complainants, and Henry M. Denton, Milicent his wife, Robert L. Shaw and William Hogencamp, Defendants.

Abstract of Pleading.

The action is to foreclose a mortgage. Bill filed March 30. 1909

The bill of complaint alleges that on the 1st day of September, 1900 Denton was justly indebted unto William Hogencamp in the sum of $12,000. That being so indebted, he gave and delivered unto William Hogencamp a bond and and mortgage bearing date that day, for $12,000, payable the 1st day of September, 1901. That mortgage was acknowledged on the 4th day of September, 1900, and recorded on the 22nd day

of August, 1901. That on the 22nd day of March, 1906, Hogencamp, by deed of assignment, granted bargained, sold, assigned, transferred and set over unto Dwight S. Harding said mortgage and the bond therein described the money due and to grow due thereon, with interest; "and did covenant, promise and agree to and with said Dwight S. Harding that there was due and owing on the aforesaid bond and mortgage the sum of twelve thousand dollars besides interest thereon."

This assignment was recorded on April 3, 1906, in the Clerk's Office of Ocean County.

On April 10, 1906, Harding assigned mortgage to Robert S. Hudspeth, Trustee.

That mortgage was given (p. 19 line 30) to Hogencamp to secure the Second National Bank of Jersey City for moneys advanced by the Bank to *Hery M. Denton and Milicent S. Denton,* at the time the mortgage was delivered, and that Hudspeth holds said bond as trustee for the Second National Bank. That the principal sum, with large arrearages of interest, is due to Hudspeth, Trustee, for the Bank.

Two answers of Denton and Shaw each admitted the executing of the mortgage and assignment to Harding, but denied that anyhing was due on the mortgage. Each alleges that the mortgage was given for Hogencamp's benefit as the pretended consideration for a fictitious sale of 100 shares of stock of the Second National Bank by Hogencamp to Denton.

And each alleges that in October, 1906, Leonard Richards brought a suit to foreclose a mortgage for $13000, part of the same transaction, and on the trial of that suit the court had decreed that the pretended sale of the 100 shares of the Bank was fictitious.

HUDSPETH, TRUSTEE,
vs.
DENTON.

No. 9.

Additional Brief or Part of Appellee.

Decree must be affirmed in this view:

Hogencamp used the proceeds of the Shaw note for $24,000, of July 23d, 1900, given him by Denton, to pay his own debt to the bank (p. 144).

The bank claims that Hogencamp used the Denton mortgage to secure this Shaw note.

If so, Hogencamp must account to Denton for the proceeds.

On such accounting Denton is entitled to the benefit of the two Hogencamp mortgages given by Hogencamp to the bank and held by the bank as security for the payment of the same debt.

Under such circumstances—the bank, Hogencamp and Denton all being parties to this suit—Denton has an equitable right to have the Hogencamp mortgages exhausted before he is called on to pay the Hogencamp debt to the bank.

Otherwise, the Court would be compelling another litigation between Denton and Hogencamp, when all their rights can be determined finally in this suit in which both are parties.

Respectfully submitted
for Counsel with Appellees.

Amendment of Bill.

During the trial and after complainants rested (p. 102) they asked to open the case and amend their bill (p. 114) by striking out the words "at the time the mortgage was delivered" and (p. 116, line 35) add the words "to said Denton or for his use"; also that (p. 117 line 12) "was given to Hogencamp to secure the Second National Bank to Denton or for his use"; and thereafter (p. 119, line 35) the complainant again amended the bill to the effect that prior to April, 1900, Denton was indebted to the Bank in a sum not less than $25,000; that about April, 1900, Hogencamp sold Denton 100 shares of stock for $24,000 and Denton gave to Hogencamp two notes dated April 23, 1900, for $12,000. each; that July 23, 1900, Denton caused Shaw to give a note for $24,000. which note was discounted by the Bank, secured by the 100 shares of stock sold by Hogencamp. And that on September 1, 1900. Denton made the mortgage in question to Hogencamp, to secure said Bank, and Hogencamp; and Hogencamp retained the mortgage as a general collateral for the indebtedness of Denton to the Bank and to Hogencamp.

And that on August 20, 1901, the stock held by Hogencamp as trustee, was taken by Denton and thereupon the mortgage was recorded and particularly applied to securing $12,000. of the $24,000. indebtedness carried on the books of the Bank, evidenced by Shaw's note for $24,000. And that on August 27, 1902, the $24,000. was changed into two notes, one for $13,000 dated August 27, 1902, and one for $12,000. dated June 20, 1902, both discounted August 20, 1902; and the mortgage is held by the Bank to secure the note of June 20, 1902. There is no allegation in the bill as amended that Denton authorized Hogencamp to use this mortgage to secure Hogencamp's indebtedness.

Bill was again amended by making Hogencamp a party defendant (p. 125). He answered the bill so amended, to the effect "that he has no interest excepting after the Bank is satisfied."

The trial commenced Sept. 14, 1910. The decree was entered May 17, 1912.

The Appeal

The appellant asks this Court to reverse an interlocutory decree, that appellant is entitled to have the benefit of the mortgage to the extent that Denton, the Mortgagor, owes Hogencamp, the mortgagee (p. 92, line 25).

Facts.

The facts proved are stated in the Memorandum of the Vice Chancellor, page 53, in considerable detail. The facts are not correctly stated by appellant in brief.

Reasons.

Two reasons are urged in the brief for appellant for reversal:

First. That Hogencamp never became entitled to the Shaw paper and the mortgage in suit, in his own right.

Second. That Denton cannot set up against the Bank defences he might set up against Hogencamp, because of the manner in which the mortgages were delivered.

Argument.

Vice Chancellor Garrison found that prior to March 24th, 1906, Hogencamp became vested with title to Shaw's notes and to the collateral which had been held by the Bank for their payment (p. 74, line 25). On page 81 he says:

"He (Hogencamp) now testifies in this suit he was mistaken when he testified in that suit (*Richards* v. *Shaw*) that he had taken the notes up. I find as above set forth that he was not mistaken; that he did take the notes up, if not in 1905, then in 1906."

The Vice Chancellor had exceptional advantages for ascertaining the truth in a very complicated fact case. On page 67, line 20, he says:

"For a period of ten days witnesses have been giving evidence concerning these matters and the items are on hundreds of pages of books, checks, contracts, and other instruments of proof."

In addition to the ten days thus spent by him, he had tried, sometime previously (p. 212, line 10; p. 214, line 30), *Richards* v. *Shaw,* the action to foreclose the Shaw mortgage for $13,000, and after decree, read *ex parte* affidavits of Hogencamp and others, on an application for a rehearing (p. 242; p. 915).

The memorandum dictated by the Vice Chancellor at the close of the trial, from page 53 to page 89, in which he states his reasons for requiring an accounting, seems to the appellee to make unnecessary any additional argument.

If the full amount of the mortgage is found on this accounting to be due, then the appellant will obtain all he wishes.

All loans by the Bank that in any way were used by, or for the benefit of, Denton, passed to him through the hands of Hogencamp, and can be readily proved by the Bank on this accounting.

This appeal is an endeavor to collect from Denton Hogencamp's previous indebtedness to the Bank.

To secure the debt of Hogencamp for $35,000, the Bank has the following securities:

Hogencamp's note for $35,000; the mortgage

on the Deal property for $35,000; the mortgage on the Paterson property for $10,000; and whatever may be found due on an accounting from Denton to Hogencamp, on the $12,000. Denton Lakewood mortgage.

It is fair to presume that this appeal is entirely on behalf of Hogencamp, for he alone is pecuniarily interested in having Denton, the mortgagor, pay more than is due to him, Hogencamp, the mortgagee, on the mortgage.

The weight of the evidence fully supports the decree, but the printed testimony in critical places is ambiguous and difficult to understand without inspecting at the same time the books and the Exhibits from which the witness read or which was being inspected by the witness and the Vice Chancellor when the testimony was given.

Counsel refers to a few of the facts not fully stated in the memorandum, sustaining this finding that Hogencamp did take up the mortgage in suit securing the note of Shaw.

(a) The bond and mortgage in that suit, on their face, were given by Denton to Hogencamp in his private capacity.

(b) There is nothing in or on the bond or on the mortgage or on any check, note, book or paper of any kind in or out of the Bank, indicating that the Bank ever had any interest in either bond or mortgage prior to April 10, 1906, when Harding assigned them to Hudspeth, trustee.

(c) Nor is there any parole evidence to that effect, except the unsupported, indefinite and ambiguous testimony of Hogencamp. *No* other witness was called to support Hogencamp, although Haskins, the cashier for many years, Hanley, the president in 1906, Harding, the assignee, and several clerks, directors and other officers of the Bank were then in the very building in which the case was being tried.

(d) The bill of complaint alleged that Hogencamp did, in consideration of $12,000, on March 22nd, 1906, sell and assign this mortgage and other obligations secured thereby to Dwight S. Harding (p. 18, line 30); and that this assignment was recorded on April 3rd, 1906,—eleven days afterwards, and that on April 10, 1906, Harding, for $12,000, assigned the same mortgage to complainant Hudspeth.

The answers of all the defendants admits these facts.

No explanation is given why Hogencamp would assign it if he did not own it.

Hogencamp, on the same day (March 22, 1906) exeuted a mortgage to Dwight S. Harding on the property at Deal to secure $35,000, and a mortgage on property at Paterson to secure a further sum of $10,000 (pp. 336, 344, 356).

Two days afterwards, on March 24th, 1906, there appears in the Suspended Debt Account in the Ledger the item:

"March 24, Bills Dis., $35,000."

The Bank did not produce these "bills" (p. 520), but its counsel stated (p. 520, line 28), that the item meant a note for $35,000, dated on that day.

Hogencamp (p. 622) testifies that this note for $35,000, discounted on March 24, 1906, *was his note.*

This discount was entered in the books of the Bank of daily credits and debits (p. 623).

This entry in the Bank Ledger is the last item on the credit side of the Suspended Debt Account, and pays in full all the items charged against the account (p. 336; p. 347, line 20; p. 500, line 40). It included the two Shaw notes in question.

Hogencamp testifies (p. 347, line 5) that when he executed the mortgage to Harding for $35,000, on the Deal property; the $10,000 mortgage on the

Paterson property; the assignment of the $12,000 Denton Lakewood property mortgage, and the assignment of the Shaw $13,000. Jersey City stable property mortgage, the intention of all parties was that they were to be held by Harding for the payment of the $35,000. and that when Harding did not, for reasons not disclosed, pay this sum, Mr. Hanley, the then President of the Second National Bank, said "that the Bank would make the loan to him, and that was done."

The mortgages were due in *three* months from date.

Mr. Ludlow testified (p. 487) that he became President of the Second National Bank on April 6, 1906, and at that time the Bank had a note for $35,000. from Hogencamp, and a mortgage on the Deal property and a mortgage on the Paterson property. And on page 520 Mr. Lane, counsel of the Bank, states that this note was a note dated March 24, 1906, and credited to the Suspended Debt Account on that date.

The two mortgages above mentioned were offered in evidence and marked "Ex. J. B. V. 17"; and "Ex. J. B. V. 18" (pp. 902 and 927).

The defeasance clause in one of these mortgages from Hogencamp to Harding, dated March 22, 1902, reads as follows:

> "Provided always, nevertheless, and it is the true intent and meaning of these presents, that if the said parties aforesaid of the first part, their heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said party aforesaid of the second part, his executors, administrators or assigns, the sum of ten thousand dollars in three months from the date hereof, with interest thereon at the rate of six per cent. per annum, then and from thenceforth as well the said obligation as also these presents and everything herein contained shall cease and become null and void, anything

herein to the contrary in anywise notwithstanding, but on failure of payment thereof to be and remain in full force." The other mortgage is in the same language, except it secures $25,000.

The consideration is in this language:

"In consideration of the debt or sum hereinafter mentioned and to be secured, and of the further sum of one dollar to them in hand paid," &c.

(e) Hogencamp testified in the *Richards* v. *Shaw* suit, over and over again, in answer to questions by Hudspeth, his and the Bank's counsel, and to questions of the Vice Chancellor, and on cross-examination, that he paid the Bank the Shaw notes (p. 265); that he paid them by check (p. 270, line 30; p. 271, line 30); that he made a clean-up of everything by paying the Second National Bank, on September 7, 1905 (p. 347, line 30), and the notes and collateral accompanying them became his property.

(f) The Individual Ledger of the Bank shows that on September 7th, 1905, the account of Hogencamp with the Bank was debited by $38,802.95 (p. 265), which Hogencamp testified was a check he paid the Bank for the two notes in question (p. 271; p. 347).

(h) In the Suspended Debt Account there appears under date of September 7, 1905, a credit of $38,802.95 (p. 336); and on page 321 it is shown that Hogencamp had to his credit on that day $51,000, and that the check for $38,802.95 was good when he gave it to the Bank.

It is proved that about that time he sold his Bank stock and received therefor on September 6, 1905, $101,200. (p. 330).

He was at that time still President of the Bank, but in trouble with the Bank Examiners.

(i) Hogencamp exercised, after September, 1905, acts of ownership over these notes, namely, he wrote on the back of each one, above the signature of Shaw, the words, "payable to William Hogencamp"; and afterwards, below the signature of Shaw, the words, "Without recourse, William Hogencamp." He testifies he did this to relieve himself of the responsibility as an endorser (p. 316-17-18-19) "because they were his property" (p. 318).

(k) The note in question for $12,000. was not produced at the trial (p. 178). It was an accomodation note of R. L. Shaw:

On page 181 the Chancellor admitted secondary evidence of its contents because it had been produced before him in the trial of *Richards* vs. *Shaw* and he had inspected it. It was testified by Mr. Lane that it was a companion of the note Exhibit C-19. C-19 reads as follows:

"$13,000.

Jersey City, N. J., August 27, 1902.

On demand, after date, I promise to pay to the order of myself Thirteen Thousand Dollars at the Second National Bank of Jersey City, with interest.

Value received.

Due .....

(Signed) R. L. Shaw."

The note for $12,000. was dated June 30, 1902 Both were accommodation notes, spoken of throughout the trial as the two Shaw notes. All the written parts of the notes, except the signature, was in the handwriting of Hogencamp.

On the back of each of the notes were written, above the signature of R. L. Shaw, the words, "Pay to William Hogencamp or order"; and below the signature of R. L. Shaw, on the back, were written the words, "Without recourse; William Hogencamp."

So long as the Bank held these notes as owner, Hogencamp did not write his name on the back as endorsee, and thereby make them payable to his order, although the loan was in fact a loan by the Bank to him.

What reason can be suggested why Hogencamp, five years after the date of the notes, wrote his name on them, above Shaw's except to show his ownership?

If Hogencamp became the owner of these notes of Shaw on September 7, 1905, or afterwards, it would become proper for him to make them payable to his order and then when he sold them or pledged them as security for his own note, he would write the words "Without recourse" above his endorsement, as a matter of ordinary prudence.

Each of these facts is consistent only with Hogencamp's ownership of the Shaw notes in March, 1906.

As these notes were the accommodation notes of Shaw, given without consideration, Hogencamp cannot hold Shaw. As they were long past due, his assignee can have no greater right to recover from Shaw than he (Hogencamp) had.

The conclusion of the Vice Chancellor, that if the complainant has a right to foreclose this mortgage at all, it must dpend upon a finding that Denton, the mortgagor, owes Hogencamp, is sustained by the evidence and should be affirmed.

If the conclusion of the Vice Chancellor upon this question of fact be at all doubtful, it is in-

sisted that the Interlocutory Decree should be affirmed for the following reasons:

1. **Because prior to April 10, 1906, the bond and mortgage in question were never held by the bank or by any one for it.**

2. **Because the Denton mortgage never legally or equitably became a collateral for the $12,000. Note of Shaw of June 30, 1902.**

3. **Because the bank holds it subject to the same equities and defences that existed against it when held by the mortgagee.**

4. **Because the bank is not the holder of this mortgage for value.**

5. **Because the bank is not an innocent holder.**

6. **Note in question barred by the statute before suit commenced.**

(I) Mortgage never held by Bank.

The appellee insists that prior to April 10, 1906, the bond and mortgage in question were never held by the Bank or by anyone for it, and that therefore the complainants hold the mortgage subject to the equities between the original parties.

The Vice Chancellor assumed, in reaching his conclusion in favor, of the appellant's theory that it (the mortgage) was held at one time by Hogencamp as trustee for the Bank.

On page 70, the Vice Chancellor says that there is no documentary or other prof of any description, excepting Hogencamp's testimony, that the mortgage in question was to be held by the Bank or by any one.

On page 71, line 30, he says:

"Passing this question, however, and as-

suming in favor of the complainants, that their contention is correct, that these securities when created were intended to be, and after being created were, held by the Bank as collateral to the Shaw notes" &c.

The appellee insists that the evidence does not support such an assumption.

The bond is a bond from Denton to Hogencamp. It recites an indebtedness from Denton to Hogencamp of $12,000.

Nothing in the bond or mortgage indicates otherwise than a mortgage to secure Hogencamp for a debt due from Denton to Hogencamp.

In other cases in which mortgages were taken by the Bank as security for loans, the entry was made in the books of the Bank, of that fact (p. 71). But no entry was made in any of the books of the Bank, that this mortgage was security.

Although the mortgage was dated September 1st, 1900 it was not recorded until August22, 1901 —nearly a year afterwards. (Ex C-1, p. 920).

If the mortgage had been intended as a security for the Shaw note, it would have so appeared on the books of the Bank, and the Bank would have recorded the mortgage at once.

Denton, to the knowledge of the Bank (p. 803) was in financial trouble.

In March, 1900, Denton had two judgments against him (p. 802).

On May 23, 1900, a third judgment.

On November 5, 1900, a fourth judgment.

On June 4, 1901, fifth judgment.

On June 26, 1901 (p. 74) a sixth judgment.

On July 13, 1901, a seventh judgment.

On August 8, 1901, an eighth judgment.

On August 15, 1901, a ninth judgment (p. 803).

On September 1st, 1900, when they were executed, Hogencamp held two notes of Denton's for $12,000. each, as a pretended consideration for

100 shares of stock of the Second National Bank (p. 127). On the back of each of these notes Hogencamp had written,

"Interest paid to December 1st, 1900."

(p. 126). They were each dated April 23, 1900, and payable in two months (p. 126).

Hogencamp and Denton both testify to the connection between the mortgage and these notes (p. 56).

Hogencamp transferred, on August 12th, 1901, this 100 shares of stock to Denton (p. 288).

The mortgage was recorded August 22, 1901 (Ex. C-1 p. 920).

Two notes of $12,000. each were given, because the Hanford mortgage was for $12,000. and therefore the Denton mortgage was made for $12,000.

Hogencamp's statement in answer to leading questions, that the Denton mortgage was held by him at one time as trustee of the Bank, as security for the Shaw notes, is not to be relied on.

On August 27, 1901, Thomas O'Callaghan wrote Hogencamp a letter a copy of which appeared in his letter-book of that date (p. 738), which stated that he had recorded on the previous day a mortgage given by one Redfield to Shaw, for $24,000, and that the assignment which he had drawn, from Shaw to Hogencamp, would not be recorded for a few days; and he testifies that he subsequently recorded it and delivered both to Hogencamp.

On August 27th, when Hogencamp thinks he went through the mental operation of making the Denton mortgage for $12,000, and the Hanford mortgage for $12,000, a security for the note of Shaw of $24,000, dated July 23, 1900, this $24,000 Redfield mortgage was assigned by Shaw to him for some purpose (p. 738). No other consideration is suggested for this assignment than the securing of the $24,000 note.

Hogencamp used Shaw to deceive some one. He had used, for some years prior to 1900, one George Littell, as a dummy to obtain a loan to himself of about $25,000 (p. 124); and a clerk named York, to obtain another loan of $21,000. from the Bank (p. 255). He was carrying on this deception with the knowledge and consent of the directors of the Bank (p. 195, line 35; p. 254, line 30; p. 255, line 25).

The Bank Examiners were criticising the loans (p. 242, line 30),—not Denton's loan, as Hogencamp says, because Denton paid his loan in full on April 16th and the Bank owed him $11,180.92 (p. 247).

Shaw's accommodation note for $24,000. was substituted on July 23, 1900, for George Littell's accommodation note for about that amount, as evidence of a loan from the Bank to Hogencamp (p. 144; p. 254).

And this with the knowledge and consent of the Bank (p. 195, line 35; p. 254, line 30; p. 225, line 35).

There was no collateral for the Littell note, and there was no collateral for the Shaw note.

The Bank could not legally hold its own stock as collateral to loans by it.

Hogencamp's letter of August 20, 1901, printed in full in appellant's brief, was certainly inaccurate, as the Vice Chancellor points out on page 60, line 20, of his memorandum. It was therefore intended to deceive some one—probably the Bank Examiners.

In their amended bill of complaint (p. 121) the complainants allege that on the 20th day of August, 1901, William Hogencamp, as trustee for the Second National Bank of Jersey City, recorded the mortgage in question and particularly applied the same to the securing of $12,000. of indebtedness carried on the books of the Bank as that of Robert L. Shaw, but really the indebtedness of Henry M. Denton.

Hogencamp testified that the indebtedness carried in the name of Shaw was really the indebtedness of Hogencamp—not of Denton. It was the same old indebtedness which had been carried by the Bank for Hogencamp in the name of Littell (p. 144).

The testimony shows that the following transactions occurred in August, 1901:

Aug. 6, 1901, note for $1,670.21, Denton to Hogencamp (p. 161).

Aug. 12, 1901, three certificates, one for 50; one for 10; and one for 40 shares of the stock of the Second National Bank, issued to Denton (p. 288).

Aug. 15, 1901, delivery of 50 of these shares to O'Callaghan.

Aug. 15, 1901, judgment against Denton for $10,149.77 (p. 725).

Aug. 16, 1901, delivery to Hogencamp by Denton of two bonds and mortgages, one for $7500, and the other for $5,000 (p. 731).

Aug. 20, 1901, order of Shaw to deliver 100 shares of stock.

Aug. 22, 1901, Denton mortgage and the assignment of the Hanford mortgage recorded (p. 738).

Aug. 23, 1901, Assignment of the Rose Flanagan judgment against Denton to Hogencamp (p. 738).

Aug. 23, 1901, delivery of fifty shares of the Second National Bank stock to Commercial Trust Company.

Aug. 23, 1901, assignment of Redfield mortgage for $24,000. to Hogencamp, by Shaw (p. 740).

The following checks were given by Hogencamp to Denton during the same period (p. 159):

Aug. 16, 1901, Hogencamp to Redfield.

Aug. 20, 1901, Hogencamp to Redfield.

Aug. 21, 1901, Hogencamp to Denton.

Aug. 23, 1901, Hogencamp to Denton.

Hogencamp testifies Redfield was Denton.

On page 220 Hogencamp is asked the following question:

Q. Did you in any capacity advance money to complete the buildings I have mentioned on that property (69th Street and West End Avenue, New York City)?

A. The Bank loaned money to Mr. Denton and paid Mr. Denton checks; but personally I had nothing at all to do with that.

Memorandum p. 55 line 10.

It is evident that Hogencamp in 1900 was in failing financial circumstances and was speculating in New York real estate in hopes of retrieving losses in other directions.

The Bank Examiners were criticising the loans in 1900, but in December, 1904, a crisis was reached.

Some indication of this situation appears in the testimony of Hogencamp on page 273-4-5.

On page 274 Hogencamp is asked this question:

Q. Did he (the Bank Examiner) insist at that time on that account being charged off on the surplus?

A. As I recollect, he went behind the counter and directed the book-keeper to make certain entries, which was done.

2. **Denton mortgage not collateral to the $12,000 note of Shaw.**

The Vice Chancellor, for the purpose of further discussion, (p. 71) assumed that if the Denton mortgage was held by the Bank as collateral for the $24,000. note of July 23, 1900, when that note was paid off the Denton mortgage became collateral for a note of Shaw's for $12,000.

There is no evidence of any kind that there was any agreement between the parties interested, to that effect.

The $12,000 note is dated June 30, 1902.

The Hanford mortgage was not satisfied until May 11, 1904 (p. 923; Ex. C-17).

There is no evidence of any agreement or arrangement by which the Denton mortgage of $12,000. became in any way collateral to Shaw's $12.000. note. The Vice Chancellor says on page 71 that he has found no such evidence.

"A mortgage given for a specific purpose must be applied exclusively to that purpose &c."

Atwater vs. *Underhill,* 7 C. E. G., 599.

3. The bank holds the mortgage subject to the same equities and defences that existed when held by Hogencamp.

Shannon vs. *Marcelus*, Sax, 413;
Atwater vs. Underhill, 7 C. E. Green, 599.

Hogencamp, as President of the Bank, passed on the Shaw loan (p. 131).

Whatever title the Bank obtained to these mortgages by any subsequent mental operation of Hogencamp's conferred upon the Bank no greater title than if Hogencamp had assigned the mortgage to the Bank.

Hogencamp held the mortgage as security for the return of the 100 shares of Second National Bank stock transferred by him to Denton on August 12th, 1901 (p. 288).

The Vice Chancellor found (p. 84, line 20) that Hogencamp was mistaken when he testified that he sold this stock to Denton; that he told the truth in his letters of November 16, 1901. Those letters were not discovered until the third day of the trial. The first letter is on page 294, and reads as follows:

"Jersey City New Jersey, November 16, 1901.

C. H. Herrick, Esq.:

Dear sir:

On the 12th day of August, 1901, William

Hogencamp transferred to Henry M. Denton fifty shares of the stock of this Bank then standing in his name, and certificate No. A-348, for fifty shares was issued to Mr. Denton Mr. Denton ws not a stockholder previous to that transaction.

(Signed) JAMES G. HASKINS,
Cashier."

although written by Hogencamp.

The second letter is on page 298 and reads as follows:

"Jersey City N. J., Nov. 16, 1901.

J. J. McKelvey, Esq.,

Dear Sir:

On the 12th of August, 1901, I loaned Henry M. Denton fifty shares Second National Bank stock to enable him to borrow $6,000 on it at the Chase National Bank. He has been disappointed in his money matters and I am obliged to take up the loan to redeem the stock. Please let me know the amount due and I will send check. Denton never owned the stock. It was my property and I transferred it to him on that date for the purpose mentioned and simply as an accommodation.

Yours truly,
W. HOGENCAMP."

Both letters were offered in evidence; one was marked, "J. B. V.—9"; and the other was marked "J. B. V.—11".

Hogencamp, on Semtember 7, 1905 (p. 85, line 36) obtained possession of these 100 shares of stock and converted them to his own use.

Therefore, as between Hogencamp and Denton Denton's equity was to pay no more than Hogencamp lost by the transaction.

4. The bank not a holder for value.

On page 143 Hogencamp testifies that the money obtained from the Bank on the $24,000. note of Shaw's of July 23, 1900, was used by him to pay off his loan which the Bank was carrying for him under the name of George Littell.

There was no evidence that there was any collateral to the Littell loan (p. 255).

This note of Shaw's was an accommodation note, payable to Shaw's own order on demand.

The Bank knew that it was an accommodation note.

On page 131 Hogencamp testifies that he, as President, supervised call loans, and that he passed on this Shaw loan.

So that this Shaw note secured the pre-existing debt of Hogencamp's, and therefore the Bank was not a holder of the Shaw note for *value*.

On page 173 Hogencamp testifies that not until the 22nd day of August, 1901, was the Denton mortgage for $12,000 turned over as collateral to the Shaw note for $24,000.

So that this mortgage passed to the Bank as security for a pre-existing debt and therefore the Bank was not the holder of this mortgage for *value*.

Tate v. *Security Trust Co.*, 18 Dick. 559.

5. The bank not an innocent holder.

The appellant's position is that the Denton $12,000 mortgage secures part of the Shaw note of $24,000.

This note admittedly was an accommodation loan and the proceeds went to Hogencamp's old debt (p. 143).

The Bank is chargeable with notice of those facts.

The Vice Chancelor concludes, on page 51, that Hogencamp did as he pleased in managing this Bank.

Hogencamp testifies that it was his duty to pass on call loans, and that he did so, and that, among others, he passed on this Shaw loan (p. 131, line 25).

He testifies that all the directors of the Bank knew that he was borrowing money under the name of Littell and under the name of York (p. 245, line 33). And on page 257, that the obtaining of money by the President of the Bank, from the Bank, under the name of a dummy, was frequently done.

The complainants did not attempt to contradict or modify this evidence of the President. They did not call any director, or the cashier, or other officer of the Bank for that purpose.

The Bank was not an innocent holder of this accommodation note, and therefore was put on inquiry as to the *bona fides* of the mortgage and as to equities which might exist between the mortgagor and mortgagee when Hogencamp, in August, 1901, determined to hold the mortgage as security for the Shaw note.

Hogencamp had no equity to use this mortgage to secure his old debt. Denton gave him no such authority. No allegation of that character in the original or amended bill.

If the Bank could be separated from the President, with respect to knowledge of the equities of the mortgagor, the fact that this mortgage, when offered as security, was almost due and had not been recorded; the fact that it was offered as security for an accommodation note past due; the fact that the proceeds of the note were used by th President to pay his debt to the Bank; and the fact that the note was a note of Shaw's while the mortgage was the mortgage of Denton, were facts which should have put the Bank upon inquiry, and are equivalent to notice of the equities of the mortgagor.

Tantum vs. *Green,* 21 Eq., 364; 6 C. E. G.
Horton vs. *Bamford,* 79 Eq., 376.
Washington Bank vs. *Beatty,* 75 Eq., 435.

It is the duty of a person about to take a bond and mortgage, to inquire of the mortrgagor as to his liability thereon.

McGee vs. *Reynolds,* 51 Eq., 114.

Note Barred.

The Shaw note in question was dated June 30, 1902.

This suit was commenced May, 1909.

The statute commenced to run against the note on its date.

Therefore the right of action expired on June 30, 1908.

Larason vs. *Lambert,* 12 N. J. L. 247.

Agens vs. *Agens,* 50 N. J. E., 566.

The appellees had no opportunity to plead the statute, because the bill of complaint did not mention the note.

The appellee insists that the decree of the Vice Chancellor should be affirmed.

Respectfully submitted,

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